CONGRESSIONAL DIGEST

VOL. III OCTOBER, 1923 NO. 1

COMMERCE includes both trade and transportation and is divided into foreign, interstate, and intrastate commerce. Transportation is carried on by land, water, and air, and the trade to be transported consists of persons, commodities, and intelligence (such as telegraph, telephone, and radio messages). Land transportation is by railway, highway, telegraph, and telephone lines (including wireless), pipe lines, electric power transmission lines, etc.

This number of the Congressional Digest deals exclusively with the railway branch of land transportation. The following clause from the Constitution (Art. I. Sec. 8, Clause 3) is commonly known as "the Commerce Clause" of the Constitution and upon it alone rests the powers of Congress to regulate commerce.—Editor's Note.

Powers of Congress to Deal with Commerce

What the Constitution Provides

THE provisions of the Constitution setting forth the powers of and restrictions placed upon Congress in dealing with commerce are as follows:

ARTICLE I

REGULATION OF COMMERCE

Section 8—Clause 3—"The Congress shall have power . . . to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

Section 8—Clause 7—"The Congress shall have power . . . to establish Post Offices and Post Roads."

AMENDMENT V

RIGHTS OF PERSONS

"No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

AMENDMENT XIV

RIGHTS OF CITIZENS

". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

How the U. S. Supreme Court Has Defined These Powers

Extracts From Decisions of the U. S. Supreme Court in Historic Commerce Cases

COMMERCE

1824—In the case of Gibbons *v.* Ogden, Chief Justice Marshall held that commerce was traffic and intercourse; that it described commercial intercourse between nations and parts of nations in all its branches; that commerce included navigation; that the language of this clause comprehends every species of commercial intercourse between the United States and foreign nations; that no sort of trade can be carried on between this country and any other to which this power does not extend; that commerce, as used in the Constitution, is a unit, every part of which is indicated by the term; that the word "among," as used in the clause, means "intermingled with," and that it was restricted to that commerce which concerned more States than one; that the clause did not comprehend that commerce which is completely internal and carried on between man and man in a State or between different parts of the same State, and which does not extend to or affect other States; that the completely internal commerce of a State may be considered as reserved to the State itself; that in regulating commerce with foreign nations the power of Congress does not stop at state lines; that the commerce of the United States with foreign nations is that of the whole United States; that this principle is still more clear when applied to commerce "among the several States"; that commerce among the States must of necessity be commerce *with* the States, and the power of Congress must be exercised within the territorial jurisdiction of the States.

The Chief Justice then inquired, "What is this power of Congress?" and said it is the power to regulate, the power to prescribe the rule by which commerce shall be governed; that it is vested in Congress, is complete in itself, and may be exercised to its utmost extent, for it has no limitations beyond those found in the Constitution.

INTERSTATE COMMERCE

1877—In the case of Hall *v.* De Cuir, the Court held "There can be no doubt but that exclusive power has been conferred upon Congress in respect to the regulation of commerce among the several States. The difficulty has never been as to the existence of this power, but as to what is to be deemed an encroachment upon it. * * * When Congress does act the State laws are superseded only to the extent that they affect commerce outside a State as it comes within the State. * * * The line which separates the powers of the States from this exclusive power of Congress is not always distinctly marked, and oftentimes it is not easy to determine on which side a particular case belongs. * * * But we think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce or to interfere directly with its freedom does encroach upon the exclusive power of Congress."

1877—In the case of the Pensacola Telegraph Co. *v.* the Western Union Telegraph Co., the Court held "The powers thus granted are not confined to the instrumentalities * * * known or in use when the Constitution was adopted, but they keep pace with the progress of the country and adapt themselves to the new developments of time and circumstances. * * * They were intended for the government of the business to which they relate at all times and under all circumstances."

POWER TO REGULATE

1897–1911—In a series of cases the Court held that: The power to regulate includes the power to prohibit in cases where such prohibition is in aid of the lawful protection of the public. Lottery Case, 188 U. S. 321. To regulate, in the sense intended, is to foster, protect, control, and restrain, with appropriate regard for the welfare of those who are immediately concerned and of the public at large. Second Employers' Liability Cases, 223 U. S. 47. The power to regulate commerce has no limitations other than those prescribed in the Constitution, but does not carry with it the right to destroy or impair those limitations and guaranties which are also placed in the Constitution and amendments. U. S. *v.* Joint Traffic Assn., 171 U. S. 505.

EFFECT OF THE FIFTH AMENDMENT

1892—The power of Congress to regulate commerce is subject to the limitation of the fifth amendment, and in exercising the power to take private property it must proceed subject to that amendment. Monongahela Nav. Co. *v.* U. S., 148 U. S. 312.

NO INTERFERENCE WITH FEDERAL POWERS

1889–1894—Any act of a State interfering in any way with the free traffic between citizens of different States in any article of commerce is an attempted regulation of such commerce, and an invasion of the power exclusively conferred upon Congress, whose non-action with respect to any particular commodity is a declaration of its purpose that the commerce therein shall be free. Minnesota *v.* Barber, 136 U. S. 313.

In a later case the Court held that the National Government may remove all obstructions to interstate commerce and the transportation of the mails, either by force operating through the Executive or by process emanating from the courts. In re Debs, 158 U. S. 564.

RAILROADS

1887–1917—In a series of cases the Court held as to railroads: By virtue of its power to regulate commerce Congress may enact laws for the safeguarding of the persons and property that are transported (by railroad) in that commerce and of those who are employed in transporting them; may authorize the construction of railroads; may grant rights of way; may legislate as to rates and charges; prevent discrimination in rates; may abrogate free passes given by a railroad in compromise of a claim for damages, etc.

Safety Appliances—Congress having determined to regulate the use of cars running on interstate railroads so as to provide for the use of certain safety appliances on such cars, has by such acts taken jurisdiction thereof.

1888—Manufacture—The business of manufacturing is not commerce. The Court held in Kidd *v.* Pearson, 128 U. S., "No distinction is more popular to the common mind or more clearly expressed in economic and political literature than that between manufacture and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation."

CONFLICT BETWEEN INTERSTATE AND INTRASTATE COMMERCE

1883–1922—Internal commerce—A State has power to regulate its internal commerce unless what is done amounts to a regulation of interstate and foreign commerce. Railroad Commission Cases, 116 U. S. 307.

In a number of cases the Court held: Congress may control intrastate rates of a carrier under State authority when necessary to remove the resulting unjust discrimination against interstate commerce from the relation between intrastate and interstate rates which are unreasonable in themselves. Houston, etc., R. Co. *v.* U. S., 234 U. S. 342.

The Court also held: The authority of Congress extends to every part of interstate commerce and to every instrumentality or agency by which it is carried on, and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. This is not to say that the nation may deal with the internal concerns of the State, as such, but that the execution by Congress of its constitutional power is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effecive government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere. Minnesota Rate Cases, 230 U. S. 352.

The Wisconsin and New York cases, in opinions by Mr. Chief Justice Taft, concurred in by all the other members of the court, sustained the power of the Interstate Commerce Commission and its authority to prescribe intrastate rates under the so-called Esch-Cummins law, otherwise known as the Transportation Act of 1920.

The real question was whether the Interstate Commerce Commission had the authority under the Transportation Act of 1920 to declare a rate unreasonable because, in its opinion, it did not yield sufficient revenue to the carriers. The court said, U. S. Adv. Opns. Apr. 1, 1922, p. 236, 242:

"The new measure imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States. This is expressly declared in section 15a to be one of the purposes of the bill * * *. When we turn to par. 4, section 13, however, and find the Commission for the first time vested with a direct power to remove 'any undue, unreasonable, or unjust discrimination against interstate or foreign commerce,' it is impossible to escape the dovetail relation between that provision and the purpose of section 15a. If that purpose is interfered with by a disparity of intrastate rates, the Commission is authorized to end the disparity by directly removing it, because it is plainly an 'undue, unreasonable, and unjust discrimination against interstate or foreign commerce,' within the ordinary meaning of those words."

Origin and Development of Railroad Transportation

PRIOR to the introduction of the railroad, the domestic commerce of the country depended largely upon a variety of inadequate forms of transportation. Public highways and private turnpikes enabled public and private conveyances to carry freight overland, but the unavoidable slowness and expense of overland transportation was such that commerce, on a large scale, between distant points was impossible. Trade was conducted between seaboard towns by means of coastwise water carriers, but it was difficult to connect the seaboard with the interior of the country. The Ohio, Mississippi, Hudson, and numerous inland streams were largely utilized and, in a measure, served the first transportation needs of those sections that were so fortunate as to be located adjacent to a navigable river. The Great Lakes provided portions of the western country with means of water transportation, but until there was a connection between the lakes and the seaboard, there was little opportunity to utilize this splendid lake highway, which later became an important part of the American transportation system.

The need of connecting the coal fields of Pennsylvania and the great agricultural regions of the middle west with the populous Atlantic seaboard became so pressing that efforts were made to supplement the overland routes, rivers, lakes, and sea coasts with artificially constructed canals. The first great canal route was via the Erie Canal, which, in 1825, conected New York with the West. The advantage which this gave to New York soon roused Philadelphia to action and in 1826 Pennsylvania's system of "public works" was begun. It was a composite rail-and-water route connecting Pittsburgh with Philadelphia, and was completed in 1834. A series of so-called tidewater canals also sprang up in Pennsylvania and New Jersey during the years 1818 to 1840.

In 1829 the Chesapeake and Delaware Canal connected the Chesapeake and Delaware bays. The Chesapeake and Ohio Canal was begun in 1826, with a view to connecting the Potomac valley with the Ohio River, and by 1850 it had reached Cumberland, Maryland. Between 1830 and 1850, Ohio, Indiana, Illinois, and numerous other states constructed canals or aided corporations in their construction.

Meanwhile, the railroad had appeared and soon made the further building of small barge canals inadvisable. The panic of 1837, moreover, which was in part due to over-extension of public and private credit in internal improvements, severely crippled the finances of the states and after 1840 brought about a sudden halt in canal construction.

The pioneer American railroad built for public use was the Baltimore and Ohio, which company was chartered in 1827 and began construction in 1828. In 1830 thirteen miles of line were open for traffic. Construction of other rail lines soon followed—the Charleston and Hamburg in South Carolina in 1829, the Mohawk and Hudson in 1830, the Camden and Amboy in 1830, and the Reading in 1833. By 1835 three lines served Boston.

In 1830 a total of only 23 miles of rail line was in use, and from this beginning sprang a mileage which now [1923] aggregates over [265,000 miles of main track with about half as much more side, passing, and terminal tracks].—*Extracts E. R. J.* *See p. 35.*

Chronological Sketch of Federal Railroad Legislation, 1808-1920

PERIOD OF AIDS—1808–1887

1808—Benj. H. Latrobe, railway engineer, reported to Congress that: "The sort of produce which is carried to our markets is collected from such a diversity of routes, that railroads are out of the question as to the carriage of common articles."

1816—Oliver Evans wrote an "Open Letter to Congress," in which he laid emphasis on the increase in the value of Western lands, consequent on better access to markets.

1819—Representative Mason, of Massachusetts, presented a petition of Benjamin Dearborn, asking for a trial of his invention for propelling wheeled carriages by steam, on the ground that it would be helpful in carrying mails.

Referred to Committee on Commerce and Manufactures and no action taken.

1823—Commodore Rogers' marine railway for launching ships called to the attention of Congress by President Monroe. Committee on Naval Affairs appropriated $5,000 for development of iron covered "way" upon which heavy objects could be moved. Committee of the Whole defeated it.

1824–1838—Congress passed a bill for railroad surveys, had several surveys made for Government railroads, but took no final action.

1825—House Committee on Roads and Canals directed to inquire into expediency of an experiment to be made with railways, under patent granted to John Stevens, of Hoboken, N. J., in 1824. Committee filed favorable report but House took no action.

1826—William Strickland's report on English Railways attracted attention of Congress and House bought 25 copies.

1828—Congress acceded to request of South Carolina Railroad for assistance of Government surveyors.

1829—Government surveyors reported to South Carolina Railroad and made favorable report to Congress through Secretary of War, pointing out that region selected was favorable, and recommending that road be made adaptable to horse power and steam locomotive. Said plan had military advantages.

1829—Baltimore & Ohio Railroad presented Memorial to Congress, asking Government aid.

1830—Bill introduced in Congress to aid B. & O. by stock subscriptions. No action.

1832—Congress printed report of English committee on use of steam carriages.

1832—Congress passed "railway-iron bill," amending tariff act of 1830 so as to allow complete drawbacks on iron imported for use in railway construction.

1833—Congress authorized the State of Illinois to dispose of its land-grant for the Illinois and Michigan Canal, for the purpose of making a railroad instead of a canal.

1833—Senate agreed to investigate advisability of constructing a Government railway from Jacksonville, Fla., to the mouth of the Suwanee River.

1835—Congress refused permission to change the Cumberland Road, a turnpike, to a railroad.

1838—Congress passed Act making all railroads in the country United States post-routes.

1839—Maximum postal rates fixed by Congress.

1841—"Railway-iron Bill" of 1832 repealed.

1841—Preemption Act passed, providing that 10 per cent of proceeds of sale of public lands in several States should be spent for "internal improvements," including railroads.

1845—Congress passed new law on mail carrying contracts of railroads.

1848—Senate ratified treaty with New Granada, for right of way across Isthmus of Panama.

Pacific Mail Company memorialized Congress for aid to build road across Isthmus. A bill was presented, but failed on the ground that it granted a monopoly.

1850—Congress passed the first of the great Land Grant Acts, granting public lands to the Illinois Central, Mobile & Chicago and Mobile & Ohio Railroads. These grants amounted to 3,751,711 acres.

1852—First general Right of Way Act passed.

1856—14,599,000 acres granted to railroads.

1857—5,118,000 additional acres granted to railroads.

1862–1871—Various direct Land Grant Acts passed, granting a total of 106,630,956 acres of public lands to 16 different railroads.

The amounts of bond subsidy issued to aid the several Pacific railways under the acts of 1862 and 1864 were as follows:

Union Pacific	$27,236,512
Kansas Pacific	6,303,000
Central Branch Union Pacific	1,600,000
Sioux City and Pacific	1,628,320
Central Pacific	25,885,120
Western Pacific	1,970,560
Total	$64,623,512

These bonds ran for thirty years and bore interest at 6 per cent payable semi-annually in January and July.

1867—Congress assumed control of railway affairs in the Territories and passed general laws from time to time to cover incorporation and regulation of the railroads.

1870–'86—Certain land grants repealed.

1870–'87—Series of bills passed for relief of settlers on railroad grant lands.

1873—Bill for right of way through Territories passed House, but failed in Senate.

1875—Bill for right of way through Territories passed both Houses.

1876—Congress passed the first Bill declaring unearned land grants forfeited. This Bill was followed by other Bills settling the conflicting claims of railways and settlers.

1876—Act to confirm preemption and homestead entries on public lands within railway grants.

1880—Act providing that settlers on restored lands who had made improvements in good faith could retain their holdings by paying $2.50 an acre.

1886—On June 30, 1886, the lands certified or patented to the various states for railways stood as follows:

	Acres		Acres
Alabama	2,929,300	Louisiana	1,072,406
Arkansas	2,517,718	Michigan	3,229,010
Florida	1,760,834	Minnesota	7,809,348
Illinois	2,595,053	Mississippi	935,158
Iowa	4,709,959	Missouri	1,395,429
Kansas	4,638,170	Wisconsin	2,874,048

1890—General Land Grant Forfeiture Act passed.

PERIOD OF REGULATION—*1887* TO DATE

Prior to 1887, when the Interstate Commerce Act became effective, regulation of railroads by public authorities was exercised under state law only.

The first federal legislation dealing with the regulation of interstate transportation was passed in 1887. This legislation created the Interstate Commerce Commission and gave it power to prevent discrimination between persons, communities, and localities, but did not confer the rate-making power; that is to say, the commission was given the power to avoid a discriminatory rate, but not the power to establish a reasonable and nondiscriminatory rate in lieu thereof.

The evolution of the regulation of interstate commerce since 1887 and of the duties and powers of the Interstate Commerce Commission is briefly portrayed in the following summary of legislation:

1887—The original act, approved February 4, 1887, applied to "any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment. • • •

Rebating was made a crime, punishable as such. Personal discrimination of every sort was forbidden.

Local discrimination forbidden.

Long-and-short-haul clause included.

All pooling and traffic agreements prohibited.

Interstate Commerce Commission of five members established having "authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted • • •."

The original act did not confer rate-making power, but this omission does not seem to have been discovered until the Supreme Court decided the Social Circle case in 1896 (162 U. S. 184), almost 10 years after the act was passed.

The Supreme Court found no provision of the act "that expressly or by necessary implication conferred such powers." Subsequent decisions in other courts followed the Supreme Court's reasoning.

1903—Elkins law—Criminal provisions against rebating and failures to collect fixed charges *with penalties*. In the original act these practices were simply "prohibited and declared to be unlawful." The Elkins amendments dealt with provisions of law regarding observance of published tariffs, but had no effect on determination of what the tariffs should be. Abolished imprisonment as penalty but provided fines.

Expediting act of 1903. Under Elkins law this act "shall apply in any case prosecuted under the direction of the Attorney General in the name of the Interstate Commerce Commission."

1906—Hepburn law.—Increased Interstate Commerce Commission to seven members. Broadened field of Federal regulation to cover express and sleeping car companies and pipe lines. Authorized commission to "determine and prescribe," upon complaint, just and reasonable *maximum* rates.

Reimposed penalty of imprisonment, as well as fine, for departure from published tariffs.

Commodities clause included:

Standardized carriers' reports to commission, and monthly and special reports as well as annual might be required under oath, with penalties of fine and imprisonment for delay and misstatement.

Carmack amendment.—Initial carrier to issue bill of lading and be liable for damage on connecting line.

1910—Mann-Elkins law.—Jurisdiction of commission extended over "interstate telegraph, telephone, and cable companies, wire or wireless." Granted power to suspend changes in rates for examination as to their reasonableness and placed burden of proof as to their reasonableness on the carriers.

Resuscitated long-and-short-haul clause—section 4—by eliminating the phrase "under substantially similar circumstances and conditions" and prohibiting increases in rates to elimination of water competition.

Created Commerce Court.

Railroad required to quote rates on written request, being liable to penalty of $250 for misstatement from which loss to shipper should result.

Shipper given power to route shipments.

Commission given power to institute inquiries on own initiative.

1912—Panama Canal act.—Commission given jurisdiction over property that may be or is transported from point to point within the United States by rail and water through the Panama Canal or otherwise.

Commission given power to order rail lines to make physical connections with water carriers.

Commission given power to establish through routes and maximum joint rates "between and over such rail and water lines * * *," also proportional rates to and from ports.

Railroads prohibited from operating vessels through the Panama Canal in competition with boat lines.

1913—Valuation act.—Provided for investigation, ascertainment, and report value of carriers' properties.

Commerce Court *abolished* by the district court jurisdiction act provisions from the urgent deficiency appropriations act of October 22, 1913.

1915—Cummins amendment as to liabilities.

1916—Cummins amendment as to liabilities and released rates.

Federal Possession and Control act.—Provisions for Army appropriation act. Wartime operation.

1917—Car service act.—Power to suspend and prescribe car-service rules.

Priority of Shipment act.—Preferential transport of certain selected shipments.

Organization amendment to Section 24 of I. C. C. act. Increased number of commissioners, and authorized action by divisions.

Increased rates until January 1, 1920, to be approved by I. C. C. (15th section applications).

1918—Federal Control act.—Approved March 21, 1918. Provisions for operation while under federal control. Compensation based on average return three years ended June 30, 1917.

Revolving fund of $500,000,000 appropriated.

Section 10. President to initiate rates. I. C. C. to pass upon.

1920—Transportation act.—Approved February 28, 1920. Terminating federal control.

Settlement of disputes between carriers and employees.

Amending act to regulate commerce—changes to interstate commerce act.

Sec. 209. Guaranty to carriers after federal control.

Sec. 210. New loans to railroads upon Interstate Commerce Commission certificate.

Amendment to act—Revision of text.

Sec. 1. Changes in territorial descriptions. Sec. 1, sub. c, eliminates water carriers which absorb terminal charges; limits jurisdiction over "rail-water" to "common control." Car service (p. 10-17) (Tank car case 242 U. S. 208). Executive action when emergency exists (p. 18-22). Certificates of convenience and necessity (I. C. C.). Extensions, abandonments.

Sec. 3. *Charges* must be paid before surrender of shipment after July 1, 1920. Ex Parte 73, Op. 6204, 57 I. C. C. 591. (3) Eliminates provision about not requiring carrier to give use of terminals to another road. (4) Joint use of terminals.

Sec. 4. Lower charge must be compensatory. Circuitous route provision. No relief for potential water competition.

Sec. 5. Interstate Commerce Commission may permit pooling of freight and division of earnings. Acquisition of control. Consolidation of lines.

Sec. 13. (3) Conference and cooperation with the state commissions respecting relationship of inter and intra state rates. (4) Interstate Commerce Commission prescribe maximum rate, charge, classification, regulation, minimum, or both, and remove undue preference "between inter and intra state traffic."

Sec. 15. Power to prescribe maximum, minimum, or both, for traffic subject to act. Street electric passenger railways excepted. Establishment of temporory through routes. (5) No loading and unloading charges for live stock at public yards. (7) Suspension limited to 120 days plus 30 days. (10) Interstate Commerce Commission may direct routing when unrouted by shipper.

Sec. 15a. Carriers, under rate-making provisions of this section, shall not include (a) sleeping-car companies, express companies; (b) street or suburban electrics; (c) interurban electric; (d) belt line owned by a state. (2) Interstate Commerce Commission shall initiate rates so that carriers as a whole will earn fair return. (3) Interstate Commerce Commission shall determine percentage of fair return 5½ per cent two years beginning March 1, 1920, plus one-half per cent for betterments and improvements. (4) Determination of value by Interstate Commerce Commission. (5) Income in excess of fair return held as trustee for United States. (6) Disposition thereof in excess of 6 per cent, one-half to reserve fund, one-half to railroad contingent fund. (7) Carrier may draw from reserve fund for dividends, etc. (10) Uses of contingent-fund loans to carriers. (15) Interstate Commerce Commission may acquire and dispose of equipment.

Sec. 20a. Regulation by Interstate Commerce Commission of issuance of securities.

Sec. 24. Commission enlarged to 11 members.

Sec. 25. United States registry steam vessels to file schedules with Interstate Commerce Commission of (1) ports, (2) dates of arrival, (3) routes. (2) Rail and water carriers must quote rates on shipper's request; reservations of space by water carrier for railroad. (3) Interstate Commerce Commission prescribe regulations for publishing water schedule. (4) Issuance of through bill of lading when space reserved. (5) Not "continuous carriage."

Sec. 26. Interstate Commerce Commission may require installation of safety devices.—*Extr. J. C. A. I.* *See p. 35.*

Federal Agencies Having Jurisdiction Over All Branches of Transportation

THE INTERSTATE COMMERCE COMMISSION has supervisory jurisdiction over all interstate transportation of persons, commodities, and intelligence, and also over all common carriers engaging in interstate commerce (excepting those common carriers operating on water). The Commission has regulatory supervision not only over interstate transportation but also over the physical properties, the operations (both physical and financial) and personnel of railroad and other interstate common carriers subject to its jurisdiction.

THE U. S. RAILROAD ADMINISTRATION is closing up the government's operation of the railways during the world war.

THE U. S. RAILROAD LABOR BOARD was created to adjust disputes between interstate railroads (and other common carriers) and their employes.

THE INTERIOR DEPARTMENT has supervision over the government-owned and operated Alaska railroad.

THE FEDERAL POWER COMMISSION has charge of the navigable streams and public lands in the development of water power to be used in interstate commerce.

THE DEPARTMENT OF COMMERCE in addition to having supervision over foreign commerce and domestic trade, has a regulatory supervision over instrumentalities of water transportation, foreign, inter and intrastate, also over radio activities.

THE SHIPPING BOARD has charge of all government-owned or operated vessels as well as a limited supervision over interstate and foreign water transportation.

THE PANAMA CANAL is a separate government establishment, maintaining and operating the Panama Canal and governing the canal zone.

The Interstate Commerce Commission and Its Work

Established Under the Interstate Commerce Act of 1887

Present Members

Balthasar H. Meyer, Chairman

Charles C. McChord	Clyde B. Aitchison	Johnston B. Campbell
Henry C. Hall	Joseph B. Eastman	Ernest I. Lewis
Frank McManamy	Mark W. Potter	Frederick I. Cox
	John J. Esch	

THE Interstate Commerce Commission, an independent establishment of the national government, is an administrative body with quasi-legislative and judicial powers, whose general function is the administration and enforcement of the provisions of the "Interstate Commerce Act," of 1887, as amended by subsequent legislation.

The history of the Interstate Commerce Commission indicates that there were three main currents of legislation in consequence of which activities devolved upon the commission. Under the primary legislation the commission's central function is the establishment and maintenance of reasonable and just transportation facilities, rates, classifications, regulations, and practices. Under the safety acts the function of the commission is the provision for safety of employes, passengers, and property. Finally, the Transportation Act of 1920 renders the commission to a large extent a board of directors of the carriers which are conceived, for certain purposes of regulation, as one great combined system.

MAINTENANCE OF RATES, CLASSIFICATIONS, PRACTICES, ETC.

The Interstate Commerce Act prescribes certain standards for the carriers under national jurisdiction and lays down certain prohibitions in the fixing of rates, in providing facilities for transportation of persons and property, in the transmission of intelligence, in classification of property, messages, etc. The law provides:

1. Every carrier subject to the act is required "to provide and furnish" transportation upon reasonable request therefor, to furnish car service and to "establish rules with respect to car service.

2. The carriers must establish through routes, provide facilities for operating them, establish just rates, and make rules for such operation, and provide for divisions of joint rates.

3. All charges made for service rendered in transportation of passengers or property or transmission of intelligence by wire or wireless must be just and reasonable.

4. Just classifications of property for transportation must be "established by the carriers as well as reasonable regulations affecting classifications of rates.

5. Carriers must file with the commission and keep for public inspection, schedules showing all the rates, fares, and charges for transportation.

Section 4 of the law renders it unlawful for a carrier to charge greater compensation in the aggregate for transportation over a shorter than for a longer distance, over the same route in the same direction.

Rates originally reduced by carriers to meet water competition may not be raised again without permission of the commission.

Paragraph (3) of Section 6 prohibits carriers from making any change in rates, except after thirty days' notice to the commission and to the public.

POSITIVE DUTIES OF THE COMMISSION

In addition to functioning as the administrative agency for securing compliance of the carriers with the standards and prohibitions described above, the act specifically directs the commission to perform duties necessary for establishment and maintenance of just and reasonable rates, facilities, classifications, practices, etc.

Section 15, Paragraph (6), of the act authorizes the commission to determine and prescribe just and reasonable rates, etc., both maximum and minimum, to be charged by carriers when it has found that the rates in effect are in violation of the act..

The commission has also been authorized to modify state rates when they are found to result in preference, prejudice, or discrimination against interstate or foreign commerce, "the law of any state or the decision or order of any state authority to the contrary notwithstanding."

Section 20 renders carriers fully liable to the lawful holder of a bill of lading for any loss, damage, or injury to his property.

ORGANIZATION

The law provides for eleven Commissioners, not more than six from the same political party, appointed by the President with the concurrence of the Senate for seven-year terms at salaries of $12,000 per annum. The commission has authority to employ and fix the compensation of such employes, expert examiners, and such attorneys as it finds necessary. Also to appoint the fifty district inspectors of locomotives, according to the Civil Service Commission's rules.

By the Act of 1917 the commission is authorized to divide its membership into divisions and to assign or refer any of its work, business, or functions, to such a division for action.

The Commissioner senior in service in each division is designated its Chairman. Each division consists of three members, except Divisions 1 and 4, which have four members. The duties of the respective divisions are as follows:

Division 1. The conduct of the work of the Bureau of Valuation, and with matters arising under the safety-appliance acts.

Division 2. The disposition of applications and requests for suspension of rates, the disposition of cases on the special docket, involving awards of reparation for unreasonable rates; the formulation of regulations for the safe transportation of explosives; requests for authority to establish released rates, and matters arising under Section 208 (a) of the Transportation Act.

Division 3. The disposition of formal cases not orally argued and recommendations as to prosecutions for violations of law.

Division 4. Matters which relate, respectively, to the reimbursement of carriers for deficits during government control; the guaranty to carriers during the six months beginning March 1, 1920; new loans to railroads; the issuance of certificates for new construction or abandonment

(*Continued on page 10*)

The Railroad Administration: Winding Up Federal Control

By James C. Davis

Director General of Railroads.

THE present Railroad Administration is strictly a liquidating organization. Federal control of railroads ended at midnight February 29th, 1920, when the property of the Railroad Companies was formally returned to its respective owners. In the Transportation Act of 1920, providing for the adjustment of all claims growing out of or connected with Federal control, the following provision appears:

"The President shall, as soon as practicable after the termination of Federal control, adjust, settle, liquidate and wind up all matters, including compensation, and all questions and disputes of whatsoever nature, arising out of or incident to Federal control."

It is under this provision of the statute that the claims against the Government are being liquidated. These claims naturally fall into two general classes:

1st. The claims of the carriers against the Government for the use of their property, including the contention quite usually made that the property at the end of Federal control was not returned to the owners "in substantially as good repair and substantially as complete equipment as it was at the beginning of Federal control."

2nd. The claims of third persons for personal injury, loss and damage, and fire; shippers' claims for reparation and overcharge in the matter of freight, and a class of claims which should be considered by themselves, growing out of a forest fire in Minnesota, for which the Government, operating the railroads in the fire district, has been held liable.

1—CLAIMS OF CARRIERS

The adjustment of these claims has been handled exclusively here in Washington by the Director General and his staff. Some idea of the scope and character of these claims is realized when you consider the extent and value of the property involved. Generally speaking, there were 241,194 miles of Class 1 railroads taken over, and, in addition, large terminals and many smaller carriers. Incidentally, there were also a large number of ships and floating equipment serving the harbors on the sea coast ports and about 2,500,000 freight cars, some 62,000 locomotives, and a large amount of passenger equipment. The property taken over was owned by 555 separate organizations, and, in addition, there were some 855 Short Lines which claim the benefit of the statutes providing for Federal control. The tentative value of this property, as fixed by the Interstate Commerce Commission, is in excess of $19,000,000,000,00.

The claims of the railroads, as finally presented, allowing for voluntary reductions made prior to the hearing on final adjustment, amounted to $827,363,185.28. The principal items of dispute were compensation, with what are known as the non-contract roads, and depreciation, retirements, material and supplies, maintenance of way and maintenance of equipment.

Up to October 1st, 1923, 88.9 per cent of these claims, aggregating $699,564,213.47, had been settled, and the remaining claims of the carriers should be finally disposed of, to the extent of at least giving each carrier a formal hearing by December 31st, 1923.

It is possible a few claims will be the subject of litigation, but disputes of this character will be limited to not exceeding three or four companies.

Up to October 1st, 1923, the cash paid to creditor companies in making final adjustment amounted to $228,580,-882.13. During the same period the Railroad Administration received from debtor companies (including adjustments definitely agreed upon but not formally closed), cash and secured obligations of railroads aggregating $152,053,032.34, leaving the net cost to the Government of these settlements to date $76,527,849.79, making the net amount of adjustment about 11 per cent of the face value of the claims.

Perhaps the outstanding feature of this adjustment, greater in extent than the liquidation of any commercial interest ever undertaken, is the fact that it has been brought about by amicable agreement, with practically no litigation. This result has been materially advanced by a fair co-operation on the part of the carriers.

In addition to the claims of the standard railroads, there are claims of a number of Short Line Companies whose property was formally relinquished on or before July 1st, 1918, or within six months after the beginning of Federal control. The liability, if any, of the Government to these lines is a matter of dispute, and controversies concerning same are now pending in the courts. There have been, however, a large number of settlements made with the Short Lines, and the remaining claims are not very numerous and will not involve a comparatively large sum of money.

2—CLAIMS OF THIRD PERSONS

The claims of third persons (usually demands for personal injury, fire and loss and damage) have been ordinarily settled through the agency of the several carriers upon whose lines the particular claims originated, under the general supervision of the central or Washington office. Some idea of the extent and nature of these claims can be obtained when you consider that on July 1st, 1923, some three years and four months after the end of Federal control, including litigation against the American Railway Express Company, there were 16,197 suits, involving $66,668,301.62, still pending.

In what is known as the Minnesota forest fire district, where an area of some 1,500 square miles was burned in a devastating forest fire which occurred in October, 1918, the courts in Minnesota, after extended litigation, have held the Government, operating sundry roads, liable for the damages resulting from the conflagration.

Out of this disaster some 11,000 suits have been instituted, the amount claimed aggregating $56,500,000.00. About 75 per cent of the claims, within the area in which the courts have held there is a liability, have been adjusted by the payment of something in excess of $12,000,000.00.

There are still undisposed of and in process of adjustment many claims of shippers growing out of disputes in the matter of freight charges, coming under the general description of reparation and overcharge.

3—FIELD ADJUSTMENT

At the end of Federal control there were outstanding in the field many claims in favor of the Government for unpaid freight charges, demurrage and switching charges, and the like, and, on the other hand, there were many claims against the Railroad Administration which were the proper subject of adjustment. The assets due the Government are being collected and the smaller liabilities paid through the agency

of the several carriers, the Administration having established with each carrier a trustee account through which these matters are being liquidated. It will be necessary to check each of these trustee accounts and this checking is now going on.

SUMMARY

Summarizing the situation, by the 1st day of January, 1924, the adjustment with the carriers of their claims against the Government should be practically completed. This will justify a very substantial reduction in the present force and overhead charges of the Administration. There will, however, remain for final closing up the unadjusted claims of Short Line Railroads, the various demands of third persons for personal injury, loss and damage, and ordinary fire losses, the final winding up of the Minnesota forest fire losses, the adjustment of outstanding reparation and overcharge claims, and a final checking of the trustee accounts with the various railroads that were under Federal control. This will require a limited force at least during the calendar year 1924, at the end of which time the organization should be reduced to nominal proportions.

The finances of the Railroad Administration reflect a very satisfactory condition. There will be no occasion for any additional appropriation by Congress, and, when the liquidation is finally concluded, the Railroad Administration will return to the United States Treasury, in unexpended appropriations and the obligations of solvent railroads, between $500,000,000.00 and $600,000,000.00.

COST TO GOVERNMENT OF FEDERAL CONTROL OF RAILROADS

The total cost to the Government of Federal control of railroads may be interesting. The appropriations by Congress for the Railroad Administration aggregate $1,750,000,000.00. If the Railroad Administration can return to the United States Treasury, as above suggested, say $550,000,000.00 in cash and railroad obligations this will make the net cost to the Government for the twenty-six months of Federal control, $1,200,000,000.00.

To this amount there must be added the cost of the six months' guaranty period immediately following Federal control, and the amount paid on account of judgments, decrees, and awards in actions brought against the Director General, the payment of which is to be made out of a revolving fund created by Section 210 of the Transportation Act, and there must be further paid deficits due Short Line Railroads, provided for in Section 204 of said act. The total liabilities above referred to will probably amount to $600,000,000.00, and make the entire cost of Federal control to the Government, including the guaranty period, $1,800,000,000.00.

The U. S. Railroad Labor Board

Established Under the Transportation Act of 1920

Present Members

Public Group. Ben W. Hooper, Chairman; G. Wallace W. Hanger, Vice-Chairman; R. M. Barton.
Labor Group: A. O. Wharton, W. L. McMenimen, E. F. Grable.
Management Group: Horace Baker, J. H. Elliott, Samuel Higgins.

THE United States Railroad Labor Board, an independent establishment of the national government, located at Chicago, Illinois, is a quasi-judicial body, whose general function is the amicable adjustment of disputes arising between carriers subject to the Interstate Commerce Act and their employes and subordinate officers in matters relating to wages, grievances, rules or working conditions.

MEMBERSHIP

The Transportation Act of 1920 provides for a board to be known as the Railroad Labor Board, to be composed of nine members, to be appointed by the President, by and with the advice and consent of the Senate, as follows: Three members constituting the labor group, representing the employes and subordinate officials of the carriers; three members constituting the management group, representing the carriers; and three members constituting the public group, representing the public. Any vacancy on the board to be filled in the same manner as the original appointment.

Of the original members of the Labor Board, one from each group shall be appointed for a term of three years, one for two years, and one for one year. Their successors shall hold office for terms of five years, except that any member appointed to fill a vacancy shall be appointed only for the unexpired term of the member whom he succeeds.

The Interstate Commerce Commission and Its Work

(*Continued from page 8*)

of railroads; the approval of the consolidation of railroad carriers, and the regulation of the issuance of securities of carriers by railroad.

Division 5. Matters arising as to transportation during war upon the direction of the President; also matters respecting the common use of terminals by carriers, concerning physical connection between rail lines and docks.

All the divisions except the last act in monthly rotation to hear argument and determine such cases as are not reserved for the full commission.

THE STAFF

The general administrative and executive officer of the commission is its Secretary.

Thirteen bureaus of the commission, one of which is of a purely institutional character, have several sections in each bureau. These bureaus are: Administration, Formal Cases, Informal Cases, Traffic, Inquiry, Law, Safety, Locomotive Inspection, Service, Finance, Accounts, Statistics, Valuation.

RELATIONS WITH OTHER GOVERNMENT BODIES

The Transportation Act created the Railroad Labor Board. No provision is made in the law for coordination between this board and the commission.

A jurisdictional conflict between the Shipping Board and the commission has emerged from the enactment of Section 19 of the Merchant Marine Act. The commission has appointed a committee to confer with a similar body from the Shipping Board "upon matters of common interest and concern."—*Extracts I. G. R.* *See p. 35.*

The Safety Work of the Interstate Commerce Commission

By Charles C. McChord

Member, U. S. Interstate Commerce Commission

THERE are two bureaus of the Interstate Commerce Commission which are directly and primarily concerned with the question of safety in railroad operation, the Bureau of Safety and the Bureau of Locomotive Inspection. The activities of the Bureau of Safety are divided into four sections: (1) Enforcement of the safety appliance law; (2) Enforcement of the hours of service law; (3) Investigation of accidents; (4) Investigation of block signals, automatic train stops and other safety devices.

The Bureau of Locomotive Inspection is charged with the administration of the locomotive inspection law.

The Bureau of Safety

The organization of the Bureau of Safety includes forty-five safety appliance inspectors, ten hours of service inspectors, and six engineers, whose principal duties are the investigation of signals which have been involved in accidents and of safety devices which are presented to the Commission for consideration.

THE SAFETY APPLIANCE LAW

The original safety appliance act was passed in 1893 and was amended by subsequent acts in 1896, 1903 and 1910; and under a provision of the act of 1910 the Commission issued an order prescribing standards for safety appliance equipment, which became effective March 1, 1920. The federal requirements for safety appliance equipment on cars and locomotives now cover practically all appliances which are used by train service employees in making up and operating trains, as applied to cars and locomotives of different types, the number, dimensions, location and manner of application of these appliances being specified.

The safety appliance inspectors are assigned to certain prescribed territory; for this purpose the United States is divided into twenty-two inspection groups and two inspectors are assigned to each group. These men make regular inspections of equipment, the results of which are tabulated and also promptly furnished to each railroad company on whose lines the inspections have been made in order that an accurate check may be had, and if necessary, corrective measures may be taken. In cases where the law is being disregarded, the inspectors secure evidence upon which prosecutions are instituted in the federal courts.

There are inspected annually approximately one million freight cars, and twenty-five or thirty thousand each of passenger cars and locomotives.

The purpose of this legislation is to promote the safety of travelers and employees on railroads, and with respect to employees this purpose is accomplished by establishing proper standards for safety appliances, providing uniformity in this equipment and requiring it to be properly maintained.

THE HOURS OF SERVICE LAW

The hours of service law, enacted in 1907, limits the hours of service of railroad employees engaged in or connected with the movement of trains to sixteen hours within any twenty-four hour period, and provides that an employee who has been on duty continuously for sixteen hours shall not be required or permitted to go on duty again until he has had at least ten consecutive hours off duty; an employee whose period of duty has been broken but who has been on duty sixteen hours in the aggregate in a twenty-four hour period must have at least eight consecutive hours off duty before he can resume duty. Train dispatchers, operators and other employees who use the telegraph or the telephone for transmitting or receiving orders pertaining to or affecting train movements are limited to a maximum period on duty in any twenty-four hour period of nine hours at continuously operated offices, and of thirteen hours at offices operated during the day time only, except that in case of emergency they may be permitted to remain on duty for four additional hours on not exceeding three days in any week. The law does not apply to wrecking crews, or in case of casualty, unavoidable accident, act of God, or where the delay was the result of a cause not known to the carrier or its officer at the time the employee left a terminal and which could not have been foreseen.

There are nine hours of service districts, one inspector being assigned to each group. These inspectors periodically check the railroad companies' records of the time on duty of employees subject to the law, and procure evidence of violation of the law upon which prosecutions are instituted. The Commission has prescribed certain operating records which must be kept by the carriers, and these inspectors keep the Commission currently informed as to whether such records are kept as required.

INVESTIGATION OF ACCIDENTS

Under the accident reports act of 1910, the Commission has been investigating and reporting upon serious railroad accidents for the past twelve years. The law authorizes the Commission to prescribe the method and form of reports of accidents to be made by the carriers, and provides that it shall have authority to investigate collisions, derailments or other accidents resulting in serious injury to persons or to property, and make reports thereon, including statement of cause and such recommendations as the Commission deems proper.

Investigations are usually held jointly with railroad officers, and, when investigations are made by the State authorities, with representatives of the State commissions as well. When question is raised as to the proper operation of signals or other devices, or when an accident has resulted from a broken rail or failure of other structure or material, engineers of the Bureau assist in the investigation and conduct such tests as may be necessary to establish the cause of the accident.

Reports upon accidents investigated are prepared by the director of the Bureau of Safety and after approval by the Commission are transmitted to the president of the railroad on which the accident occurred. In numerous instances, operating conditions and practices have been found to prevail which were likely to lead to accidents at any time, and specific recommendations to eliminate these dangers have been made. Investigations of materials which have failed in service have disclosed conditions in rails, wheels and axles which require thorough study not only of specifications, composition and manufacturing processes but also of the effects of loads and stresses to which they are subjected in service. In respect to rails alone, extended researches have been instituted and are now in progress concerning the conditions which produce defects as well as to determine methods of detecting and reducing or eliminating these defects. Much of the value of this work results from the publicity given the reports.

INVESTIGATION OF SAFETY DEVICES

In 1906 the Commission was directed by a joint resolution of the Congress to investigate and report in regard to the use of and necessity for block signal systems and appliances for

(*Continued on page 34*)

The Work of Railroad Valuation by the Interstate Commerce Commission

By Ernest I. Lewis
Member, U. S. Interstate Commerce Commission

THE valuation act, Stat. L. 701, Section 19a, Interstate Commerce Act, was approved in 1913. It provides that "the Commission shall as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this act." The act proceeds to direct the Interstate Commerce Commission to ascertain and report in detail for each piece of property other than land owned or used by a common carrier, the original cost to date, cost of reproduction new, cost of reproduction less depreciation, other values and elements of value; the original cost at the time of dedication to public use and the present value of lands; the history and organization of present and predecessor corporations; increases or decreases in stocks, bonds, or other securities; moneys received by reason of issues of stocks and bonds and other securities; the syndicating, banking, and other financial arrangements under which such issues were made and the expense thereof; the net and gross income of the carrier; the expenditures made by each carrier and the purposes thereof; the amount and value of aids, gifts, grants of rights of way and donations made to the carrier and the amount and value of allowances and concessions made by the carrier in consideration thereof. The Commission is required to report separately the property held for purposes other than those of a common carrier, showing for such property the original cost and the present value. Analyses of methods are to be set forth. Every common carrier is directed to cooperate with the Commission in making the valuation.

The Supreme Court had held in a long line of decisions that rates which do not afford a railroad or other public utility a fair return upon the value of property devoted to public use are in contravention of the prohibitions against confiscation contained in the federal Constitution. Prior to the passage of the act, the Commission for many years had repeatedly urged upon Congress the necessity for a physical valuation as a basis for an intelligent exercise of its rate-making functions. State, railroad and public service commissions, economists, and public officials joined in these recommendations. Other causes contributed to the desire for trustworthy valuation information, among them the wide discrepancy in the rate of taxation in different states upon railroad property, and wide-spread charges that the railroads were grossly overcapitalized.

The Interstate Commerce Commission, to which the valuation was assigned, created a Bureau of Valuation, and the work was divided among its three sections: The Engineering Section made inventories of all railroad property other than land and estimated its cost of reproduction new and cost of reproduction less depreciation. The Land Section inventoried and valued lands. The Accounting Section collected data on original cost, reported on corporate histories, and searched the records for accounting information. The first step of the three sections consisted of field work. There were 1976 properties spread out over about 250,000 miles of right of way between the two coasts. The task was stupendous. Actively begun in 1914, and seriously impeded by the exigencies of the war period, this field work is now complete except for a few odds and ends.

The second step was the collation of the material gathered in the field into underlying reports. As of October 1, 1923, underlying reports of the respective sections had been completed on roads reporting the following percentage of total railway mileage in the United States: Accounting, 89.56; Engineering, 89.02; Land, 87.28. The completion of this work is looked for within the next eight or ten months.

When the three underlying reports upon a road are completed, the Commission proceeds to the preparation and service of a tentative valuation report fixing a tentative single sum value. This report is served on the carrier, the Attorney General of the United States, governors of States in which the carrier has property, and other interested parties. On October 1, tentative valuation reports had been served upon the properties of carriers whose mileage was 22.03% of the total railway mileage in the United States. By provision of law if no protest is filed within thirty days, the tentative valuation becomes final. If a protest is filed within the statutory period, a hearing is held at which interested parties are afforded an opportunity to be heard, and if the parties so desire, oral argument is had before members of the Commission. The Commission thereafter renders its final decision on the value of the property in question.

The dates of inventory and valuation range from 1914 to 1919, with a few after the latter date. The act provides that after a valuation has been established as of any given time, the Commission shall thereafter in like manner keep it up to date. To comply with this requirement the Commission has directed in valuation order No. 3 that the carriers report additions, betterments, and retirements since their respective dates of valuation. These are now being policed and checked as a preliminary to bringing valuation down to date.

In estimating cost of reproduction new and cost of reproduction less depreciation, normal unit prices of June 30, 1914, are used. These unit prices are arrived at by a consideration of prices prevailing during a period of five and in some cases ten years preceding 1914. The use of 1914 prices was occasioned through the desire of the Commission to have all valuations upon a comparable basis and has the further advantage pointed out in one of the early valuation reports that these prices were on the whole very close to those prevailing for the twenty years preceding 1914 when the majority of the now existing ways and structures and equipment were brought into existence. Lands are appraised as of the date of inventory upon the basis of the value of similar adjoining and adjacent lands. The work of bringing valuation to date will bring into issue the problem of higher price levels and depreciated values of the dollar as the measures of value.

Up to June 30, 1923, the Commission had expended the sum of $24,546,872 upon its valuation work, while the carriers claim to have expended over $60,000,000 in their cooperative efforts and in taking necessary steps to protect their property interests.

Changes in the Interstate Commerce Act since section 19a was written into the law have served the purpose of emphasizing the desirability of a reliable valuation. The consolidations provided for in section five, paragraph 4, can only be made upon condition that the par value of the securities of the consolidated companies do not exceed the value of the consolidated properties as determined under section 19a. Valuation is needed in the administration of section 20a to

(*Continued on page 35*)

Working Out a Plan For Railroad Consolidation

By Henry C. Hall

Member, U. S. Interstate Commerce Commission

Commissioner in Charge of the Consolidation Work of the Interstate Commerce Commission

THE Transportation Act, 1920, which became effective on February 29, 1920, amended section 5 of the act to regulate commerce by adding several paragraphs with reference to consolidation of railway properties. Paragraphs (4) and (5) of section 5 of the present Interstate Commerce Act provide that as soon as practicable the Commission shall prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems.

Summarized, the requirements with which the Commission must comply in preparing a plan for consolidation of the railway properties into a limited number of systems, are:

1. Competition must be preserved as fully as possible.
2. Existing routes and channels of trade and commerce must be maintained; and
3. Subject to the two foregoing requirements, the several systems must be so arranged that the cost of transportation as between competitive systems and as related to the values of the properties through which the service is rendered shall be the same, so far as practicable, so that these systems can employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon the value of their respective railway properties.

Shortly after those provisions of the law became effective the Commission instituted an investigation upon its own motion for the purpose of complying with the mandate of the statute. All common carriers by railway subject to the act were made respondents. Prof. W. Z. Ripley, of Harvard University, was employed to make a preliminary study of the problem. Under the Commission's general direction he spent many months in assembling and analyzing data and conferring with persons well informed as to various phases of the problem. The results, together with his recommendations, were embodied in a report to the Commission. He proposed 21 systems, the principal railroads in each system, respectively, being:

1. Pennsylvania.
2. New York Central.
3. Baltimore & Ohio and Philadelphia & Reading.
4. Erie, Lehigh Valley and Wabash.
5. Delaware, Lackawanna & Western and New York, Chicago & St. Louis.
6. Chesapeake & Ohio.
7. Norfolk & Western and Virginian.
8. New York, New Haven & Hartford and Boston & Maine.
9. Pere Marquette.
10. Southern.
11. Atlantic Coast Line and Louisville & Nashville.
12. Illinois Central.
13. Seaboard Air Line.
14. Florida East Coast.
15. Union Pacific and Chicago & North Western.
16. Chicago, Burlington & Quincy and Northern Pacific.
17. Chicago, Milwaukee & St. Paul and Great Northern.
18. Chicago, Rock Island & Pacific and Southern Pacific.
19. Atchison, Topeka & Santa Fe.
20. St. Louis-San Francisco.
21. Missouri Pacific.

On August 3, 1921, the Commission agreed upon a tentative plan in which designation by name was confined, in the main, to Class I roads. Nineteen systems were designated by the names of the principal carriers, with one alternative, System No. 7a.—New England-Great Lakes. Prof. Ripley's report was made an appendix thereto—(*Consolidation of Railroads*, 63 I. C. C., 455). In some respects the tentative plan presented alternatives for systems recommended by Prof. Ripley. Due publicity was given to this tentative plan. It was served upon all respondents and copies were sent to the governor of each State as well as to the tribunal, if any, having regulatory powers over railway common carriers of that State. The tentative plan was put forward in order to elicit a full record upon which the plan to be ultimately adopted could rest and without prejudgment of any matters which might be presented upon that record.

The carriers included by name in the tentative plan comprised most of the Class I steam railroads, that is those whose annual gross revenues exceed $1,000,000. On December 31, 1921, there were 185 Class I carriers operating nearly 235,000 miles of road. In addition there were 663 Class II and Class III carriers operating some 23,000 miles of road, besides hundreds of lessor and other classes of companies reporting to the Commission. The problem is to prepare a plan for the consolidation of the railway properties of these carriers "into a limited number of systems." Congress has not indicated in any manner what number of systems shall be regarded as "a limited number." The number mentioned in various discussions of this subject is from 15 to 25.

Of course consolidation of railway properties is not a new subject in this country. There have been few years in the history of American railways in which plans for the union in some form of separate lines have not been discussed, and many of these plans have been successfully executed. Nearly all of the existing railway systems are, in a greater or less degree, the results of acquisition of proprietary interests, with or without leases, or of leases without proprietary interest, or of corporate merger. Such systems as the Baltimore & Ohio, Pennsylvania and Southern control properties that were once controlled by many hundreds of separate corporations.

During the last 18 months the Commission has held more than 70 days of hearing at Washington and in all sections of the country for the purposes indicated in its tentative plan, and has recently announced that the taking of evidence will be brought to a close upon completion of a hearing to be held in Washington commencing on November 16, 1923. The record of those hearings now comprises nearly 50 volumes, containing over 11,000 pages of testimony and 630 exhibits, many of which are very voluminous.

The record when completed will comprise a survey of the rail transportation plant of this country unlike anything attempted before. It will contain a map of the properties of each carrier. It will show mileage, classified in various ways; number of locomotives, cars and units of floating equipment; important terminals, either owned individually or by terminal companies, their location and capacity; elaborate data as to passenger and freight traffic, showing among other things as to important carriers the characteristics of their freight traffic, total ton miles, ton miles per mile of road graphically illustrated, predominating classes of traffic, trend or direction of such traffic, amount originating on line and the amount received from connections, together with detailed figures showing the amount of traffic received from and delivered to each connection. This latter is for the purpose of indicating the existing routes and channels of trade and its importance may be judged from the fact that the Penn-

(*Continued on page 34*)

The Glossary

Transportation Terms Explained

By Judge Charles C. McChord

Member, U. S. Interstate Commerce Commission

CLASS I Railroads—Roads which have annual operating revenues of $1,000,000 or over.

Common Carrier—One who holds himself out to transport passengers or property for hire, for all persons, indifferently, who may request such service.

Demurrage—A charge exacted for the detention of freight cars (or other equipment) beyond the free time allowed for loading or unloading. Regarded as a penalty charge for the detention of, rather than a charge for the use of, the equipment. Intended to insure release of freight cars within a reasonable time.

Discriminatory Rates—Rates which exact from one shipper a greater or less compensation for any service rendered than from another for doing a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions.

Empty-car Movement—Is usually in the opposite direction to the prevailing loaded-car movement, and is commonly spoken of as "return empty movement," such as the empty tank car movement from markets back to the oil fields. On many railroads the prevailing or predominating currents of particular or general traffic are in certain directions, with corresponding return empty movements in the opposite directions.

Interstate Transportation—Transportation from or to one state to or from another.

Intrastate Transportation—Transportation wholly within one state.

Freight and Passenger "Pools"—An arrangement between two or more carriers whereby territories are divided or rates on certain traffic are fixed by private agreement in order to limit competition, or to favor the movement of freight or passengers over a particular road, the earnings being divided between the pool members. The interstate commerce act prohibits the pooling of freights and divisions of earnings thereunder. The Interstate Commerce Commission may, however, in the interest of better service to the public, or economy of operation, where competition will not be unduly restrained, authorize divisions of traffic and earnings upon reasonable conditions.

Watered Stock—A popular term to express the idea of the capitalization of any corporation, such as a railroad corporation, in excess of the amount of money actually invested in the property, the excess being characterized as "water," which, if not "squeezed out," imposes a burden upon the public in the form of the payment of freight rates out of which dividends upon the whole stock, including the "water" are paid.

Water-Compelled Rates—Rates made by rail carriers on a basis lower than would otherwise be charged, in order to meet the competition of water carriers.

Kinds of Rates—Two broad classes, Class Rates and Commodity Rates:

A Class Rate—(Such as first-class, second-class, etc.), is a freight rate between points named in the tariff, published to apply upon all commodities grouped in the particular class named except that where commodity rates on specific commodities are named the latter are applicable. There are at present three general classifications but efforts have been made from time to time to obtain a uniform or consolidated classification. In classifying articles, value, weight, liability to injury in transit, form in which offered for transportation, bulk, and numerous other elements are considered.

A Commodity Rate—A rate applying to a specific commodity from and to specific points which otherwise would be charged the rate applying to the class to which it is assigned. Commodity rates are as a rule lower than the class rate on the same commodity and are established between numerous, but not all, points, on many commodities which load heavily and move in large volume, such as coal, grain, lumber, etc.

A Joint Through Rate—A rate applying between two points over the lines of two or more carriers who indicate their concurrence in the joint rate, usually, by joining in the tariff in which the rate is published. In the absence of a joint rate a "combination rate" would apply, the latter generally speaking, being a rate made by adding together the separate local rates of each line over the route of movement. Ordinarily a joint through rate is less than the "combination rate."

A Proportional Rate—A rate charged for a portion of a through haul and generally applied by a carrier on traffic which originates at or is destined to points beyond its own rails. On such a shipment there has been or will be, paid another charge for additional transportation and for this reason, among others, the proportional rate is usually less than the local rate of the carrier.

A Preferential Rate—A rate which gives preference or advantage to a particular person, locality, etc., or a particular kind of traffic. It may or may not result in prejudice or a disadvantage to some other person, or locality. But if it does so result and the prejudice or disadvantage is undue and unreasonable the rate is considered unduly preferential and unduly prejudicial and is therefore prohibited by the interstate commerce act. The Interstate Commerce Commission hears and determines hundreds of complaints of unduly preferential and unduly prejudicial rates. The question is one of fact and when the Commission decides that a rate is unduly preferential and unduly prejudicial it becomes unlawful and must be changed.

Industrial Railroad—A term now commonly used to designate a short line of railroad constructed primarily to serve a particular plant or industry in the general interest of which it is owned and operated.

A Tap Line—Generally classified as an industrial road but refers more particularly to a short line of railroad owned by or affiliated with lumber companies or mining companies and built to "tap" natural resources, lumber for example, located some distance from a trunk line.

Pipe Lines—Lines constructed for the transportation of oil or other commodities through pipes. Pipe lines handling crude oil from points of production to refining points take much traffic from rail carriers. Many such pipe lines, however, are private. Those which handle the oil for any one offering it for transportation are common carriers and are subject to the interstate commerce act. Common carriers by pipe line transporting water, natural or artificial gas are not subject to the act.

Milling in Transit—The practice of shipping a commodity

(*Continued on page 16*)

An Analysis of the Railroad Problem

By Hon. Albert B. Cummins

U. S. Senator, Iowa, Republican,

Chairman of Senate Committee on Interstate Commerce

Senator Cummins is co-author of the Esch-Cummins Act, the Transportation Act of 1920, now in force. Senator Cummins has fully set forth his views with regard to consolidation, government ownership, valuation, rates, and the repeal of section 15a of the Transportation Act in a series of twelve articles which appeared in the *Des Moines Register* and the *Washington Post*, July 20–August 1, 1923 and from which the following article is prepared.

THE fundamental problem in transportation is, how can we secure and maintain systems of railways that will, with reasonable promptitude, and with reasonable safety, carry commodities from the places of production to the places of use or consumption at the lowest practicable charge for the service. It is admitted everywhere and by everybody that our existing railways are incapable of performing this service in an efficient adequate way. Not because the managers of these systems are incompetent, but because railway facilities are inadequate. Competency alone will not make these facilities adequate. It will require both competency and very large expenditures of money to make them adequate.

If the volume of traffic could be distributed so that one-three-hundred-and-sixty-fifth part of the year's business could be offered for transportation each day, or even if one-twelfth part could be offered each month, the shortage would not be so serious.

There are, however, seasonal peaks and depressions in transportation, and must always be. It is therefore necessary, if the railways are to move the traffic at the times it should be moved, that the railways must be provided with facilities that are not constantly in use, and this requirement increases, of course, the capital that must be invested in railway property.

It is quite impossible to estimate with a high degree of accuracy the losses which are suffered by reason of the acknowledged shortage of transportation facilities. But the most casual survey of past conditions leads to the conclusion that they are enormous in amount. They are of two classes: First, actual losses, which have occurred by reason of the inability to market commodities in existence and which are ready for sale. The farmers, with their cattle, hogs, and grain furnish the best illustration of such losses. Second, indirect losses, sustained because production is restrained and the natural growth and development of the country is to some extent checked.

We have 265,000 miles of main track, with about half as much more side, passing and terminal track, and the necessary roadbed, bridges, rights of way, lands, lots, station houses, warehouses, elevators, machine shops, office buildings, and an almost infinite variety of other equipment. We have 70,000 locomotive engines; we have 58,000 cars of various kinds used in passenger service; we have 2,600,000 freight cars.

Yet as great as this property is in extent, it is unable to meet the requirements of our enormous commerce.

Of the total main track mileage, i. e., 265,000 miles, 235,000 miles are owned or operated by companies known, in the terminology of the Interstate Commerce Commission, as class 1 railways (including the larger switching and terminal companies).

The cost of maintaining and operating the class 1 railways, including the large switching and terminal companies, was, for the year 1921, $4,603,806.907, and for the year 1922, $4,455,650,216.

The shortage of transportation facilities, so acute in 1921 and 1922, would not have been so marked if the railways had been able to keep their engines and cars in proper repair. However that may be, it is safe to assume that the class 1 railways will require each year of the immediate future from $4,500,000,000 to $5,000,000,000 to maintain and operate with fair efficiency their existing facilities, with no additions, no betterments, and no extensions, the cost of which, if made, would be properly chargeable to capital account.

If we are to have an adequate system of railway transportation there must be expended each year, and for years to come, for additions, betterments and extensions, from $750,000,000 to $1,000,000,000. It is not to be expected that any considerable part of this additional investment can be raised through rates charged for transportation service. Substantially all of it ought to come and must come from investors who are willing to embark new capital in the enterprise of transportation.

Our present policy of private ownership under public control and regulation cannot endure unless the railways, taken as a whole, can earn the cost of their maintenance and operation; with a fair return upon the value of the property which renders the service; if they do not, the necessary extensions, additions and betterments cannot be made and many of the facilities will fall into inefficiency if not total disuse.

It is my deliberate judgment that under present conditions a railway that does not earn a net operating income of at least 5½ per cent upon the value of the property rendering the service cannot secure the new capital absolutely necessary for the enlargements of its facilities to meet the expanding demand of our constantly increasing production, and that railways which earn less than 3 per cent upon that value must eventually be abandoned and dismantled. This means, if the situation remains as it is, inadequate additions and betterments upon about one-half of our entire mileage and the complete disuse of between 60,000 and 70,000 miles of railway which now render the only transportation service for many millions of our people.

I have profound faith in the genius of our institutions and I am not suggesting that this indescribable injury will ever be inflicted upon our people, but I am suggesting that the solution of the problem will require something more than fierce denunciation or harsh criticism. No one knows better than I do the flagrant offenses which have been committed by railway promoters in the construction and the financing of many of our railways, and no one has been more active than I have been during the last 20 years in the effort to prevent a repetition of these offenses. Under existing legislation a repetition is impossible and to secure that legislation I have devoted the best years of my life. The object which now interests me is, to take this railway system of ours as it is and make it competent to render the constantly increasing service which the welfare of the country requires; it must be maintained and advanced to its proper state of efficiency and adequacy.

Heretofore, in these articles, I have, in the main, been treating the subject as though the railways were all owned by a single corporation. They are, in fact, owned and operated by a thousand corporations or more. The number of

Class 1 roads varies from year to year; in 1922 they numbered a little less than 200.

Let us examine for a moment the general character of the service. From 85 to 90 per cent of the railway traffic of the country is either actually or potentially competitive. At least 70 per cent of the earnings of the railways, taken as a whole, come from what is ordinarily called "through rates." Most of the railways to which I have referred as railways with insufficient earnings are railways which, after a comparatively short haul, deliver their traffic to a connecting road at some junction point. It is obvious, of course, that with the competitive tariff the rates must be the same, no matter whether the freight be carried over one road from the point of origin to point of destination or whether it be carried over tw or more connecting roads. If the latter, then the never ending controversy arises with respect to a division of the rates, on through business, between the connecting roads. The short-haul carrier is usually the unfortunate carrier.

From 50 to 60 per cent of the cost of maintenance and operation is a direct labor cost, and this does not include the high salaries of managerial officers. The remainder consists of materials, supplies, joint facility rents, equipment rent and taxes. There are some people who seem to think that labor costs can be materially lessened.

So far as the near future, at least, is concerned I do not agree with them. I think wages are far more likely to be advanced than diminished. Therefore the country cannot reasonably expect a reduction in the cost of maintenance and operation through a decrease in wages.

Neither the government nor the railways can control the cost of materials and supplies; whether prices will rise still higher or fall to a lower point depends upon commercial conditions governed by natural forces. There is no reason to believe that joint facility rents and equipment rents can be lessened until we change our system. Taxes have enormously increased during the last ten years and every man knows that it is not probable that they will be diminished; on the contrary, it is almost certain that they will grow larger instead of smaller.

If the cost of maintenance and operation is to be substantially reduced so that transportation charges can be decreased and at the same time the weaker roads supported, we must look for the remedy of existing ills in another direction. We must look for it through a readjustment of our railway systems and a more efficient management in transportation.

Keeping constantly in mind the two general objects toward which we are striving (which are, first, to make our railway system efficient and adequate; to do this, as we have seen, our railways must have, and all of them must have, sufficient gross revenues to maintain themselves in a high state of efficiency, and sufficient net incomes to make a fair return upon the value of the property rendering the service so as to give them the credit necessary to secure the capital for additions, betterments and extensions of their facilities; and second, to reduce the charges for transportation to the minimum consistent with efficient and continuous service), it is my opinion that these objects can be attained, if private operation is to continue, in but one way and that is through the consolidation of substantially all our railways into a comparatively few systems—say from fifteen to twenty-five, and so consolidate them that each of the systems will, under normal conditions, after full maintenance, earn a net income that will pay a fair return, and practically the same fair return, upon the value of the property rendering the service.

There is no valid objection to the consolidation of the railways along the lines of the transportation act, and the hope of successful regulation of railway transportation and of reducing railway charges lies in following the course there outlined. I believe sincerely that if it is not followed we must adopt the policy of government ownership and operation of the railways.—*Extracts.*

The Glossary

(*Continued from page 14*)

to a certain point, there subjecting it to some process and reshipping it to its final destination at a rate less than the otherwise applicable combination of the local or other rate into the transit point and the local rate out of the transit point. The shipment ordinarily passes out of the carrier's possession at the transit point and is at a later date turned over to the same carrier or some other carrier for further transportation. Under such an arrangement grain of all kinds is milled, stored, graded, etc., before continuing on its journey; flour is blended, cotton compressed, lumber yarded, dressed or subjected to other processes.

Replacement cost—The cost of replacing a worn-out unit of property with a new one at current prices.

Tare tonnage—The weight of the cars without the freight or passengers carried.

Ton-miles—The number of tons carried reduced to an assumed haul of one mile. Thus two tons each carried five miles is equivalent to 10 tons carried one mile, or 10 ton-miles.

Locomotive ton-miles—The equivalent locomotive weight viewed as moving one mile. Thus a locomotive of 100 tons running 50 miles is equivalent to 5,000 tons moving one mile, or 5,000 locomotive ton-miles.

Car-miles—The number of cars hauled reduced to an assumed haul of one-mile. If one car is moved 100 miles and another 200 miles the two together represent a service of 300 cars moved one mile, or 300 car-miles.

Train-miles—The number of trains run reduced to an assumed run of one mile. Thus if one train runs 100 miles and another runs 80 miles, the two represent a service of 180 trains run one mile, or 180 train-miles.

Trunk-line—A carrier operating over a large territory. The term "trunk line territory" has a special meaning and refers roughly to the Eastern half of the Eastern District excluding New England.

Railroad valuation—The process of determining the fair value of the property of one or more railroads.

Railroad investment—The amount of money actually expended in acquiring the road and equipment of a railroad according to the books of the carrier.

Operating income—The sum remaining after deducting from operating revenues, operating expenses, taxes, and uncollectible railway revenues.

Depreciation—The annual amount charged to operating expenses to represent the loss of value resulting from the lapse of time. It is assumed that a freight car or other unit of property has a limited life even when kept in a normal state of repair. The term may also refer to the amount of the balance in the reserve accrued from the depreciation charges.

Maintenance charges—The charges for repairs and depreciation of the property.

Switching and terminal companies—Companies performing only switching or other terminal service as distinguished from road haul service.

Should "Section 15a"" Be Repealed?

Pro

Hon. Arthur Capper
U. S. Senator, Kansas, Republican

THE farmers of the great productive regions of the United States, taking into consideration the prices received by them, are heavily overcharged for transportation. The entire agricultural area of this country is under the blight of excessive and, in many cases, prohibitive freight rates.

The vice of section 15a lies in the fact that it attempts to provide a fixed return to be earned upon the aggregate value of all railroad properties, good, bad, and indifferent. Virtually this valuation is based upon the present cost of reproducing the lines. The result is that no matter how worthless a road may be, it is considered entitled to earn 5½ per cent on what it would now cost to rebuild it. For example, the Atlanta, Birmingham & Atlantic, now passing through its second receivership in less than 10 years, cannot earn its operating expenses; but the Interstate Commerce Commission announces a tentative valuation of $25,000,000 for this road. Under section 15a that $25,000,000 is added to the valuation on which the public must pay a return in the shape of freight rates. This means that all the southern roads in that rate group are permitted to charge rates based on their own value, plus the $25,000,000 valuation put on this worthless road.

This road was built, as many other such roads were built, for speculation and stock jobbing. So that these worthless roads may earn what they never have been able to earn and never will be able to earn, the Interstate Commerce Commission in several instances has refused the requests of prosperous roads to lower their rates.

Depriving the state railway commissions of virtually all control over state rates has led to increasing state rates which already were giving a state's carriers an ample return to a higher figure, so that they might earn dividends for several lame-duck, stock-jobbed roads in another state.

In most instances these "lame-duck" roads are notorious for their financial failure. In some cases they were originally built to serve some mining or lumbering areas, and the mines have been worked out and the regions denuded of saw timber, and the traffic now originating in the territory served is inadequate to provide profitable operation of the roads. To care for these roads the rest of the country must endure rate extortion. Then, as we have seen, these strong, profitable carriers refuse to give any part of these surplus earnings to the government for the support of these "lame-duck" roads.

This rate-making farce is proving costly to the country. It places an embargo on free movement of the products of the nation's greatest producing industry. Thousands upon thousands of acres of crops have rotted, instead of being added to and increasing the country's prosperity. Neither can an Interstate Commerce Commission immured in Washington, and completely out of touch with state and local conditions, by any possibility act promptly or fairly on the innumerable rate problems constantly arising in 48 states.

Section 15a has proved a dangerous and impossible makeshift. The sooner we repeal it and give state railroad commissions a little more control over intrastate rates and coordinate power to adjust such rates fairly, the better it will be for the roads and for the country. It will end most of these excessive rates and make possible the return of prosperity.—*Extract C. R.* *See p. 35.*

*See footnote page 22

Con

Hale Holden
President, Chicago, Burlington & Quincy Railroad Company

IT is not true that thousands of acres of crops have rotted because of any embargo upon their movement caused by the freight rates.

Senator Capper intends to be fair, but he has allowed his imagination and his zeal for his farmer constituents to betray him into figures of speech that are not warranted by anything in the facts of the farm situation.

The regular Annual Report of the Department of Agriculture for the year 1922 states that the farmers of the United States are in a much better position financially than they were a year ago, or eighteen months ago; it states that the increased prices of farm products have, within the past few weeks, added a billion and a quarter dollars to the value of farm crops.

The operation of well known economic laws of universal force and application explain the agricultural situation of today. The factors which control the consuming markets, and not the freight rates, are the determining factors in price variations of farm products. If the freight charges on wheat, for example, were reduced one-half, the consumption of flour in this country would not be increased. The amount of this reduction when brought down to a barrel of flour would be so small that it would not affect the price of flour to such an extent as to increase its consumption.

The question of the relation of freight rates to the market prices of commodities is not by any means a simple question. It depends largely upon three things: first, the value of the commodity with reference to its weight and bulk; second, the perishable quality of the commodity; third, most important of all, it depends upon the length of haul.

It will be a revelation to most farmers to learn that the average haul of apples shipped in boxes is 2,800 miles, and that similar products have such an unusual length of haul, and he will undoubtedly conclude that the question of what is a fair charge for carrying apples these enormous distances is a complicated question, which cannot be settled off-hand.

How meaningless it its to compare the freight charges upon a carload of apples with those upon a carload of coal. No one would think of comparing the value of a bushel of Oregon apples in the Chicago market with the value of a bushel of Southern Illinois coal, and a comparison of the freight rates upon the two commodities is just as meaningless. As a matter of fact, the shipment of coal is far and away more profitable to the railroads than the shipment of apples. Railroads haul 90 cars, each carrying 50 tons of coal from Southern Illinois to St. Paul in a single train; apples are shipped largely in refrigerator cars, the average load of each car being approximately 17 tons.

During the year 1921 the rate of return earned by all of the railroads in the United States designated as "Class I" railroads was only three and three-tenths per cent upon their value as determined from the tentative valuation made by the Interstate Commerce Commission, and only four and fourteen-hundredths per cent for the year 1922.

Do these figures indicate that the railroads generally are prospering? Is it fair to select a few prosperous railroads and use them as representative of all the roads? Would it be fair to select a few prosperous farmers and publish their earnings as proof that the farming industry is prosperous?—*Extracts.* *See p. 35.*

Should "Section 15a*" Be Repealed?

Pro

J. T. Ryan
President, Southern Traffic League

EXPERIENCE in this country (and in England where a similar statute was passed) has demonstrated the futility of any law designed to bolster up a particular industry which is subjected to natural laws of economics as much as any other industry.

In the face of economic conditions existing during the past 18 months it was utterly impossible to give to section 15a the effect which was intended. High railroad executives foresaw the practical difficulty, if not impossibility of asking for further rate increases in order to cause their aggregate net revenues to equal the minimum return attempted to be prescribed by section 15a. Instead of increasing rates further the position of the railroad executives has been one designed to hold what rates they have and to avoid and ward off the pressing demand and insistence upon material reductions.

Wrong in principle, section 15a has given rise to much adverse criticism throughout business circles and other classes of people in this country. With all business going through the inevitable processes of deflation and readjustment downward to a peace-time basis the inquiry is being made at all times as to what peculiar situation surrounds railroad enterprise that it should be singled out by the government and a law passed in its favor which is designed to protect it against inevitable economic laws.

Hence not only has the law proven unworkable under actual conditions but public sentiment, nevertheless, assails the law as discriminatory in character and as amounting to pure class legislation.

In practice, however, the laws has had truly baneful effects. The inability of the Interstate Commerce Commission to make such rates as are required by business in order to move traffic has been as hurtful to the railroads as to the public generally. The law has stood as a constant warning and obstacle against constructive rate manipulation designed to assist in bringing about a satisfactory business condition. The matter of reducing rates to meet business necessities has resolved itself into a question for the railroad executives alone to decide—the Federal commission is practically powerless to exert its own authority. Leaving it to the railroads to decide for themselves what reductions in rates to make has caused numerous discriminations to be worked out which, in some measure, are clearly based upon supposed political expediency rather than a careful regard to economic facts.

One of the arguments asserted in support of the passage of section 15a was the claim that it was a correct solution of the problem of the "weak" lines, especially when connected with the scheme of railroad consolidations. But the "recapture" clause of section 15a cannot be applied, if at all, except upon the basis of an accurate determination of actual value of the individual lines.

The eventual operation of the "recapture" clause of section 15a (if such clause could ever be applied) would be to cause the gradual approach to government ownership through the process of a constantly enlarged volume of railroad securities being owned or controlled by the government in consideration of loans made by the government to the railroads out of the money realized by the "recapture" clause.—*Extracts.* *See p. 35.*

**See footnote page 22*

Con

Daniel Willard
President, The Baltimore and Ohio Railroad Company

THE Transportation Act, under which the railroads are now operating, contains upon the whole the best and most constructive system of railroad regulation so far devised in this or perhaps in any other country, designed to preserve private ownership and operation under governmental supervision or regulation, and it would seem to me most unfortunate if Congress should attempt to amend it in any form at the present time.

Private ownership of the railroads cannot continue unless the railroads in the aggregate are permitted under our system of regulation to charge such rates and fares as will enable them with honest and efficient management to maintain a basis of net earnings, which of course must be the foundation for their credit, sufficient to justify and inspire the confidence of the investing public by whom several hundred millions of railroad securities must be voluntarily absorbed each year.

Congress was fully aware of the constant need of the railroads for new capital with which to provide the additional facilities necessary to take care of the increasing demands of our growing commerce, and also realized that unless the plan of regulation finally adopted would enable the railroads as a whole to establsih their credit on such a basis as would make it possible for them to secure upwards of $1,000,000,000 a year from voluntary investors, private ownership as an economic policy would fail. It was because of this understanding and belief that Congress wrote into the Transportation Act, sometimes called the Esch-Cummins Act, that section known as 15a.

Perhaps no piece of legislation has ever been more persistently misunderstood or more misrepresented than this particular provision. The law clearly says that it shall be the duty of the Commission to fix rates so that the railroads, as a whole, or in any particular rate group, will be able to earn as nearly as may be a fair return upon the value of their property devoted to transportation purposes. Congress also said in effect that for a period of two years a return of six per cent upon such value would be considered a fair return. It is well known that during the period which has elapsed since the first of March, 1920, when the Transportation Act became effective, the railroads as a whole have not only not earned in any single year the rate of return specified in the Act, but in 1921 they earned a little more than one-half of six per cent, and in 1922 the amount earned was less than four per cent upon the aggregate property value. The bonded indebtedness of the railroads is about 61 per cent of the entire capitalization outstanding in the hands of the public, and is approximately the same percentage of the value of the railroads as fixed by the Interstate Commerce Commission for rate-making purposes. Therefore, if the railroads as a whole, or in groups, are permitted to earn and actually do earn a rate of return of 5¾ per cent on the entire value of their properties, as now fixed by the Commission, that same amount of money would be equal to about 10 per cent on 61 per cent of the value of their properties, or the amount of the bonded indebtedness.

If section 15a should be repealed, it would leave the railroad situation no better than it was before the period of federal control, and it is generally recognized that railroad regulation as it was then had been a failure.—*Extr.* *See p. 35.*

Should Rates on Farm Products Be Reduced?

Pro

Hon. Paul B. Johnson
Former U. S. Representative, Mississippi, Democrat

MORE than a year ago the railroad companies issued a statement in which they said there would be a sweeping reduction in rates throughout the country within a short time; that business was reviving, and it would not be long until industry would be stabilized throughout the entire country. They urged the people to be patient and indulgent with the railroads.

Grain men and live-stock dealers, lumbermen, and business men generally of the South and West have appeared in large numbers before the Interstate Commerce Commission pleading for a reduction in freight rates, at which time they showed the commission that there was almost a general paralysis of business on account of the excessive freight rates. The Interstate Commerce Commission has given very little relief to their petitions.

Recently the railroad commissions and public utilities commissions of practically every state in the Union have protested against the action of the Interstate Commerce Commission, which under the provisions of the Transportation Act has not only prescribed the rates to be charged in interstate commerce but has actually deprived the states of the right to regulate intrastate commerce, although intrastate rates were just and reasonable and were nondiscriminatory.

I direct your attention to the provisions of the Transportation Act which requires all railroad companies earning more than 6 per cent on the value of their property used in transportation from September 1, 1920, to turn half of the excess so earned over to the United States Government for the support of the weaker railroads. Many of the railroads are shown to have earned many times the 6 per cent, as shown by reports of the Interstate Commerce Commission.

The railroads earning the amounts more than 6 per cent have been ordered by the Interstate Commerce Commission to turn 50 per cent of the excess over to the Government in compliance with the provisions of the Transportation Act, for the support of the weaker roads, but that order has been ignored by the railroad companies, and they have retained all the money up to this time.

The Railway Business Association is composed of men who own stocks and bonds in the railroad companies and who are engaged in the manufacture of railway materials and equipment, and who are contractors in railway construction and dealers in miscellaneous railway supplies. These people can, under the provisions of the Transportation Act, sell to the railroad companies, which is nothing more than selling to themselves, materials at any price they care to charge and make just as big profits as their conscience will permit.

Under the provisions of the Transportation Act the Government guarantees to the railroad companies a fair return on the value of their investment, and there is no restriction put on the amount they shall pay for materials, construction work, or anything else. They can waste and steal as much as they like, yet the United States guarantees this return on their investment. No accounting to the government is required of the amount paid for materials, construction, supplies, or anything else. They can pay their officers any salaries they care to, and yet the Government guarantees a fair return on the investment. No wonder the railroad companies are opposed to repealing this law.—*Extr.* *See p. 35.*

Con

R. H. Aishton
President, American Railway Association

WITH the Government, through its different bodies, that is, Congress, the Interstate Commerce Commission, the Railroad Labor Board, and the various State Railroad Commissions—exercising complete control over the question of rates charged by the carriers; the amount paid for labor by the carrier; their income regulated to a "fair return" to be determined by a government institution; the value of the carriers' property, upon which the fair return is based, also determined by the Government; with the power vested in a government body to determine whether or not the management is "honest, efficient and economical" and "expenditures for maintenance of way and structure reasonable"; with the question of whether or not stocks and bonds are to be issued and, if so, in what amount, governed by the Government, and with all favoritism or unjust discrimination in favor of any of the carriers' patrons expressly forbidden, can anyone with reason contend that the carriers are not now under existing law adequately regulated, or that any interest of the shipping public is not fully recognized and adequately protected. If then, no such reasonable contention can be made, should the carriers not be given a period of rest from political agitation and legislation, and be permitted to demonstrate to the public what they can do under this system of regulation.

Application of "common horse sense treatment" is needed in meeting the economic situation in certain sections of the country, for which "high freight rates" have been blamed. To illustrate: A drop some time ago in shipments of seed potatoes from Maine to the Southern trade was blamed on freight rates by farmers and shippers in that section of the country. To ascertain the actual situation, President Todd of the Bangor and Aroostook Railroad proposed to the Aroostook Potato Growers Association that if it would select a competent man to investigate the real reason the railroad would pay all expenses. A man unknown to the railroad officials was selected and after visiting most of the Southern states, he made a report to the Potato Growers Association which was practically to the effect that freight rates had nothing whatever to do with Maine losing the seed potato traffic, but that the real responsibility rested on the potato shippers themselves.

The result is that the farmers of Aroostook County now know what the trouble is, have quit their talk about freight rates and are devoting their attention to providing the real remedy for the discovered trouble. There isn't any question that arises regarding any phase of transportation, either in Kansas, Texas, or the State of Maine, or even Minnesota, whether affecting potatoes or wheat, or what not, that isn't susceptible of similar treatment.

Some time it will be found that the remedy may and does exist in the transportation company. The railroads are just as glad to know this as anybody else. On the other hand, a great many of the half-baked and unproven ideas that are today perverting the mind of the people in various sections of the country when submitted to this analysis, are completely and satisfactorily corrected.

Substantial progress has been made in carrying to success the program "to provide adequate transportation service in 1923" which was adopted last April in New York by the railroads of the country.—*Extracts.* *See p. 35.*

Should Rates on Farm Products Be Reduced?

Con

Clyde M. Reed

Chairman, Kansas Public Utilities Commission

THE transportation charges of the country will aggregate something more than six billion dollars this year. Distributing this burden so that it will fall equitably upon the different forms of traffic and classes of commodities is a most important duty.

Our contention is that the present apportionment of the total transportation burden to the different classes of commodities bears with undue and unjust weight upon agricultural products, particularly grain and hay. These are low value commodities, transported long distances from this great producing region to the points of consumption. No other producing region in the world moves its traffic on the rail radius that the Missouri Valley does.

Assuming that a given amount of money must be raised from a levy upon commerce in the form of transportation charges upon commodities of greatly varying bulk, weight, and value, it follows that some regard must be had for the characteristics of the different commodities and the charges that they will bear and move freely.

Out of the commercial and economic experience of 40 or 50 years up to 1913, freight rates upon the different principal commodities had been adjusted with some relation to each other and some relation to the value of the commodity as affecting the transportation cost which those commodities could bear and yet move freely. The ability of the community to pay and move, with reasonable regard to the producer and the consumer, had always been considered a factor in the distribution of the total transportation burden as between these commodities up to that time.

Following the close of the great war there was a radical departure from this general price basis. Agricultural products and particularly grain and hay fell immensely in value as compared with other commodities. The distortion arising out of those unbalanced adjustments has continued for three years and is substantially as great today as at any time in the last 36 months.

Beginning in 1918 increases in freight rates were made upon a straight percentage basis. On June 25, 1918, the Director General of Railroads increased freight rates 25 per cent. Again in 1920 freight rates were increased 35 per cent. In this section the increase in freight rates as of August 26, 1920, over June 24, 1918, amounted to 68.75 per cent.

In distributing the increased transportation burden among commodities, has full consideration been given to the tremendous changes in the relative values of the main commodities, and therefore the ability of the different forms of traffic to bear their allotted share of the burden? My answer is most emphatically, No.

Let us examine the relation of commodity values in 1913, 1922, and 1923, and the relation of the freight costs to these values.

Grain is back to substantially the level of values, but the freight rates upon grain have been increased over the 1913 basis by as great an average percentage as freight rates upon other commodities have been increased. Hard coal is substantially 200 percent of the 1913 value, but the freight rate increase is about 50 per cent, the same as on grain. Lumber is substantially 200 per cent of the 1913 price level, but the average of its freight increases is less than upon any other commodity and runs as low as 25 per cent.

(*Continued on page 24*)

Pro

Howard Elliott

Chairman, Northern Pacific Railway Company

RATES are important, but their effect upon the success of any business enterprise has been magnified and there is danger that the theory of reducing rates in an effort to improve business and agricultural conditions will do more harm in other directions than the possible good to be obtained by such reductions.

The railroads must be ready at all times with a most varied assortment of transportation for their customers. This transportation cannot be produced today, stored, and sold tomorrow; if not used when produced, it is wasted. The railroads must be ready to meet the maximum demand and must be compensated for that "readiness to serve" by the prices or rates they charge for the thousands of kinds of transportation that the public uses every day, and must have, if our country is to progress.

Lately there have been discussions about a scientific basis for rates. Exactly what is meant by this is not very clear, but some say the term means that there shall be terminal charges for receiving and delivering the freight and a haulage charge for the movement between the shipping and receiving points. Also that rates shall be higher on high-priced articles than those on heavy, coarse, and cheaper articles, sometimes described as "basic commodities" with the idea that prices or rates for these latter can be reduced materially and the difference made up from the higher-priced articles.

In a large way, these two basic principles have been recognized in the tariffs and classifications that have developed since 1887 when the Interstate Commerce Law was passed, but with countless modifications to meet varying conditions in this great country.

The United States could never have developed on a rigid mileage system of rates and to apply any such basis now to industry, mines, manufacture, jobbing, agriculture, and the great development west of the Mississippi River with its countless human activities, social and educational, all created in the last fifty years, would disrupt commercial, agricultural, and social relations to such an extent that a chaotic condition would result and the development of the country would be disturbed and checked.

To make material reductions on basic commodities and obtain the revenue lost by such reduction through increasing the rates on other articles is an impossible task as the following figures show:

In 1922 the Interstate Commerce Commission reports that 234,882 miles of Class I roads carried 1,859,484,476 tons of revenue freight. Of this tonnage 7 per cent is an extreme estimate of those high priced and bulky articles on which it may be possible to make some increases at this time, including all less than carload shipments, even if thousands of communities and individuals can be made to see that such adjustment is fair and the increases receive the approval of the Commerce Commission. On many railroads the percentage would be less than 7 per cent. Industry that has heretofore been developed on the present basis of rates, established through commercial friction and approved by state and federal authorities, will naturally be slow to assent to increases as suggested.

In discussing the rate revisions, the country should face the facts and realize that it is not possible to increase the

(*Continued on page 24*)

Should the Transportation Act of 1920 Be Repealed?

Pro

Hon. Robert M. LaFollette

U. S. Senator, Wisconsin, Republican

THERE is no question that transportation in this country is so deficient at the present time that a great deal needs to be done to put the system to rights.

In my personal view, the first practical step towards solving the transportation problem lies in the repeal or drastic amendment of the Esch-Cummins Law.

The assertions from various quarters that the Progressives are committed to any plan of government ownership or operation of the railroads is unfounded and untrue.—*Extracts.* *See p. 35.*

Hon. Smith W. Brookhart

U. S. Senator, Iowa, Republican.

THE cost of transportation is excessive. I think the evil is in the capital charge and the excess profits of subsidiary corporations in furnishing supplies.

The $19,000,000,000 valuation is beyond all reason. This valuation was determined at the peak of high prices following the war.

On May 18, 1920, at a secret meeting of the Federal Reserve Board, the two most momentous economic decisions in all history were made. One called upon the Interstate Commerce Commission to raise railroad rates high enough to maintain this $19,000,000,000 valuation, the other decided upon a general deflation of business. It caused a deflation of $32,000,000,000 in the value of farms and farm crops, and of $18,000,000,000 in other business. Since agricultural capital is less than one-third of the total, the loss to agriculture was four times as great in proportion as that of other business. A reduction of $7,000,000,000 in watered railroad values down to their market value would not be as much in proportion as the deflation of the farmers. Such a reduction would not be a deflation of the railroads because they never did have the value of $19,000,000,000 and never were much above the $12,000,000,000 for which I contend.

Their sponsors point to a low rate of return for 1920-21 and '22. They claim a deficit in 1920 of eight-hundredths of 1 per cent, a return of 2.95 per cent in 1921 and of 4 per cent in 1922. They claim this return is too small, but every writer that makes the claim leaves out three dominant facts, each of which more than offsets it.

First, in 1920, the first year after the roads were turned back, the private managers increased the operating expenses by $1,485,000,000. This excess continued at over $1,200,000,000 in 1921 and over $1,000,000,000 in 1922.

Second, the railroads have over $1,200,000,000 of surplus collected from the people for the purpose of making up dividends in lean years.

Third, all the stocks and all the bonds, representing all the value of all the railroads in all the United States are worth on the market only $12,000,000,000, according to their own admission, and the earnings have been enough to pay a reasonable return upon this value.

These items together with the capitalization of unearned increment in property values, the bonus or excess return upon the bonded portion of the capital above the interest rate, and the excess profits upon supplies furnished to railroads by subsidiary companies, amount to more than $1,000,000,000 a year between the producer and the consumer.—*Extracts.*

Con

Samuel O. Dunn

Editor, Railway Age

THE fact that the railways are now handling a record-breaking traffic without any considerable "car-shortage" shows how much the physical condition and operating efficiency of the railways have improved. A year ago there was a shortage of about 140,000 cars.

The improvement in service is partly due to the large expenditures that have been made to repair old equipment and get new equipment, and to enlargements of terminals and other facilities, and even more to improvements in operating methods. It is estimated the total expenditures made for new equipment this year will be 700 million dollars, and the investment in other improvements about 400 million dollars. The expenditures made for improvements and additions are the largest since 1917, and may be found, when all the facts are available, to have been larger than in any year since 1911. This large increase in capital investment has been due to several causes. First, it has been due to the demands of a record-breaking traffic. Secondly, it has been due to the high wages and high prices prevailing. Third, it has been due to an increase in net earnings, which always has resulted in increased investment in the railroad as well as in every other business. Fourth, it has been due to the Transportation Act which was passed in 1920, and which has held out to the railways and investors in their securities the assurance that if the roads are honestly, efficiently and economically managed, the Interstate Commerce Commission will make rates which will on the average yield a fair return upon their properties, and that in determining what is a fair return the commission will take into consideration the need for the adequate development of transportation facilities.

The dark cloud upon the horizon of the railways is the persistent demand coming from certain classes and sections of the country for immediate reductions of freight rates and for legislation which would reduce and permanently restrict the net return the railways are now held by the Interstate Commerce Commission to be entitled to earn.

While the total earnings of the railways have been increasing, so have their operating expenses and taxes. Immediately prior to government operation of railroads it required about 75 cents out of each dollar earned to pay operating expenses and taxes. Thus far this year it has taken almost 84 cents out of each dollar earned to pay operating expenses and taxes.

What would be the results of following each of two alternative policies that are being advocated? One of these policies is that of enacting legislation advocated by radical statesmen such as Senators LaFollette and Brookhart. This would result in wiping out a large part of the valuation of the railways and confiscating a larger part of their property. The alternative policy advocated is that of leaving the Transportation Act of 1920 unchanged. If that should be done, I believe that in a comparatively short time the railways would be able to earn the return which the Interstate Commerce Commission has held that it is fair for them to earn. The result probably would be that the railways would be able to raise and invest the 750 million to one billion dollars of new capital annually which all authorities who have studied the subject agree they must invest if they are to expand their facilities sufficiently to enable them to handle the commerce of the country satisfactorily.—*Extracts,* *See p. 35.*

Should the Transportation Act of 1920 Be Repealed?

Pro

American Federation of Labor

Report of Executive Council, October 1, 1923

THE Transportation Act—otherwise known as the Esch-Cummins Act—has proved, as was prophesied by representatives of labor, to be a great benefit to the railroad exploiters and a great detriment to railroad employes. The valuation and guaranteed income provisions provide a basis for supporting the most extravagant claims of the banker managements of the railroads for high freight rates and parisimonious demands for reduced wages. Meanwhile the act purports to give to the employes remedies in wage disputes which are more likely to work to their injury than to their benefit. If the employes obtain favorable decisions from the Labor Board after long and extensive hearings, the employers are free to reject the findings as did the railroads in over a hundred instances prior to the shop trade strike. If, on the other hand, the decisions are favorable to the railroads and the men reject the decision, then the drums will be beaten, the trumpets blown, and public opinion stirred against the workers who are accused of defying the government.

The Railroad Labor Board is but one evidence of the mania for political intrusion into the industrial field. Its failure has been complete. The law under which it was created should be removed from the statute books by the forthcoming Congress. This should mark the end of legislative efforts toward political invasion of the field of wage fixing and employment relations.

Despite all claims to the contrary, the Esch-Cummins law has proven an utter failure and has been the cause of unrest, disturbance, and dissatisfaction, manifested by wage earners, farmers, and the people in general. It has never served a single useful purpose and its immediate repeal will be but a belated act of justice. The dominant fact is that it has well served the Wall Street interests, but it is time that consideration be given to the people's common interests.

A year ago the Executive Council proposed an arrangement to create a railroad Labor Policy Committee constituted of the A. F. of L. selected from the members of the Executive Council and three representatives of railroad employes, selected by the organizations representing the railroad workers, this Labor Policy Committee to consider all railroad legislative proposals that may be submitted for consideration to Congress and to prepare or approve and further such railroad legislation as would serve best the interests of the wage earners, and the public generally and meet the requirements of the railroad workers in particular. This proposed arrangement has received the approval of the Railway Employes Department and of its constituent organizations. We are thus confident that whatever final legislative program is to be furthered and to receive organized labor's support will be one that will protect all railroad wage earners in their economic and industrial rights in particular and will enhance the economic and social interest of all wage earners, and the people in general.—*Extracts.*

* The section known as 15a of the Transportation Act, sometimes called the Esch-Cummins Act, reads as follows:

"In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish, or adjust such rates so that carriers as a whole (or as a whole in each of such groups or territories as the Commission may from time to time designate) will under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment, earn an aggregate annual net railway operating income, equal or nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation."

Con

C. H. Markham

President, Illinois Central System

IF transportation charges are to be appreciably reduced at present, it will have to be done at the expense of the railway owners or of their employes or of both. If it is at the expense of the employes, there will be further labor unrest and the consequent interruptions of service by strikes or breakdowns in morale. If it is at the expense of the owners, already too poorly rewarded, there will be a prompt cessation of the railway projects for improved service already launched, since there will be no further hope of attracting new capital into the railroads. Either situation promises trouble for those who expect to benefit permanently by a reduction in rates.

There is another alternative, however, and it is the one the acceptance of which will permanently solve, not merely complicate, our present railway problem. That alternative is *not* government ownership, because the pitfalls of that course have been conslusively demonstrated by the experiences of other nations. That alternative which I counsel is a full, fair trial of the present Transportation Act; an acceptance of the justice of present transportation charges as being necessary for railway progress, while at the same time not hindering the path of business, as proved by the present successful business revival; and a recognition that the public best serves itself when it allows its railroads to prosper.

There is no quick way to cure our railway ills. Most of the panaceas for imediate improvement sponsored by those attacking the railroads are impracticable, and I trust that fact will be made evident without the bitter necessity of experiment. The sooner the public realizes the futility of such false hopes, the better. Our railway problem will be permanently solved only when the public, the arbiter of railway destiny, realizes that the way to get cheaper transportation is to get better transportation first. The economies which will be made possible through the use of new and up-to-date equipment over modern roadbed and through efficient terminals will tend ultimately to reduce—and reduce permanently and greatly—our present transportation costs. Any manufacturer can tell you how much cheaper machine production is than hand production, but he can undoubtedly tell you at the same time of the sacrifices that had to be made and the money that had to be invested in order to get the machinery. It is the same way with the railroads. A temporary sacrifice by railway patrons right now in the interest of improving the railway plant will make possible ultimately a greatly increased production of transportation at rates lower than we have today.

If the public can restrain itself from blocking railway progress by a demand for lower rates and the repeal of constructive features of the Transportation Act, the public will find that it will have improved transportation service in the future, when as every sign indicates—such service will be even more badly needed than it is today.

My message is to build, not to tear down; to plan for next year and for ten years from now, rather than merely for tomorrow; that the genius which made American railroads great in the earlier days will become evident again, to the lasting benefit of all of us.—*Extracts.* *See p. 35.*

Federal Regulation Over Intrastate Rates

Pro

Alfred P. Thom

General Counsel, National Association of Railway Executives

IT is difficult to appreciate how men and women, sincerely desirous of perfected transportation service under the present system, can favor conferring upon the States the power to discriminate against interstate commerce.

Manifestly, in their dominant aspects the needs of commerce are national rather than local. Approximately 85 per cent of American commerce is interstate or foreign, while approximately only 15 per cent moves only within the limits of the several States. How anybody can claim that this 15 per cent should have the power to place at a disadvantage and discriminate against the other 85 per cent is one of those marvels in the operation of human conceptions and ambitions which it is difficult to understand. This is made all the more amazing because to a very large extent the persons interested in the movement of the 15 per cent are the same persons who are interested in the movement of the 85 per cent, for the same people engage in both State and interstate commerce. They will not tolerate, if they understand, any policy which makes 85 per cent of their business more expensive and puts it at a disadvantage in respect of rates or of service or of both, in order that they may get some advantage for the remaining 15 per cent.

When it is remembered that the shippers and other users of transportation must, in the nature of things and in the final analysis, pay its cost, every inducement of interest and every principle of justice would seem to require that the burden of transportation should be equitably distributed among all classes of traffic, whether state or interstate, and that neither should possess the power of throwing an undue part of the burden upon the other.

In America there must be freedom of trade between the States. No State can be permitted to erect a tariff wall at its borders. This is true whether the tariff wall be an import tax or a system of unjust discrimination in transportation rates or in transportation service.

If there be, as there is at present, a dual power—one the power of the State over State rates and State services, and the other the power of the Nation over interstate rates and interstate service—and the power of one be so exercised as to discriminate unduly and improperly against the other, there must be an authority somewhere to determine whether or not the unjust discrimination in fact exists, and, if so, to apply corrective measures. This power, under existing law, and necessarily under our constitutional system, is reposed in the national government. It is administered through the Interstate Commerce Comission, which represents the national aspect of transportation and the overwhelming volume of trade. Manifestly, it could not be lodged anywhere else than in the national government, unless it is wise public policy to subordinate the greater to the less and to give to each State the power to fasten unjust discrimination on interstate commerce and block the way into its own markets of the traffic from other States.

And yet this is the proposal now seriously put forward by those who advocate giving to the States the power to fix the rates and to control the service of transportation within their several borders, no matter how much this exercise of State authority may discriminate against, prejudice, or burden interstate commerce.—*Extracts.* *See p. 35.*

Con

James A. Perry

Former President, Nat'l Ass'n of Railway and Utilities Commissioners

FOR many years there has been a nation-wide agitation looking to abolition of the rights of the different states to regulate railroads in any manner. The climax of this agitation came with the transportation Act of 1920. The construction of this Act by the Interstate Commerce Commission outlaws state regulation and strikes at the very fundamentals of our system of government.

The people of our country will never let up until the Transportation Act of 1920 is so construed or amended as to restore to the various states all power previously exercised over the subject.

The centralization of all rate making authority at Washington is utterly impracticable and unworkable.

The right of local self government is destroyed in the present construction of the Transportation Act.

There is a work for our national government, and, quite as true, there is a work for our states. The commerce of our country calls for this dual regulation as no other part of our existence requires.

It has always been with the individual states that we have gone forward in the first efforts of any new idea pertaining to our commerce. If proven good in one state, other states can take it up and finally it becomes national in its scope. It is far better that one state try it, should it be unwise, than for our entire country to be affected with an expensive experiment. State regulation of rates meets the demands of local traffic conditions, where an intimate knowledge can be quickly applied, whereas, at one common center the truth, in most cases, will never be known. Remove the state lines, if you will, and you still have the problem of reasonable local rates, and to be fixed by one central body that can never have more than a confused idea of the real truth of local conditions.

Under the provisions of the Transportation Act of 1920 the Federal Commission divided the United States into four groups for rate-making purposes, treating all carriers in each group alike; thus in advancing rates the more prosperous lines were increased to the same extent as the weaker lines, each line losing its individuality.

Under the practice of the commission, if carriers desire to make changes in rates, they publish and file such schedules with the Federal Commission and, if they remain on file for thirty days without protest, they become effective. Under this practice, rates can be advanced without the knowledge or consent of the communities affected. Under the practice of the Georgia Commission, before carriers can advance rates, it is necessary for them to file an application with the Commission for authority to put in increased rates, the matter is assigned for hearing and all parties interested are notified and afforded an opportunity of being heard. This method of procedure is almost, if not entirely, impracticable by the Federal Commission.

We've had a trial of nearly four years of directing the affairs of this country from centralized powers at Washington and the result has been a staggering loss to the nation's commerce and the carriers as well. The machinery of the law, as at present construed and enforced by the Federal Commission defeats the very purpose which it was created to correct.—*Extracts.* *See p. 35.*

Is Government Regulation Detrimental to the Railroad?

Pro

L. F. Loree

President, Delaware & Hudson

AN extraordinary period of activity in this country followed the Civil War. In 1873 and again in 1884, serious losses were realized; agrarian discontent was widespread throughout the newly-settled areas; those who suffered looked, without the keenest vision, for a reason and thought they found it in railway practices.

In reality, the railways were fellow sufferers in the general depression and shared in the common loss. The feeling engendered was used by the politicians to organize what was known as "the Granger Movement." The panacea they offered was railway regulation.

The plan of regulation that developed the greatest popularity involved the creation of commissions, the essential characteristics of which is that, although their members are usually appointed in the same manner as the subordinate members of the executive branch of their governments, they really exercise the powers of a legislature.

This system of control, so repugnant to the genius of American political ideals and institutions, gradually develpoing for the past fifty years, has eaten into the stability of the railway industry, and at this time seriously threatens its economic efficiency and the general welfare of the American people. It is no longer confined to the railway industry but now effects every undertaking in the so-called "public utility" field; those in which the capital used is held in law, to be "charged with a public interest." In recent periods of prosperity, when all other American industries have been active and successful, drastic laws have held these "regulated" industries to a dead level of low earnings and inability to provide for increased demands for service.

The degeneracy of such a system is inevitable. It sets up a buyers' tribunal, controlled by no standards of law or equity, certain to become the advocate of those selfishly interested in depressing rates.

Moderation in the terms of regulation does not necessarily imply higher rates or returns to investors. Either might well be demanded at this time, but they ought not to be confused. It is not certain that a mitigation of the rigors of regulation would result in enhanced rates or earnings; the only certain result of such mitigation would be a commensurate restoration of freedom to the industry. Managements would regain initiative and hope; anticipation of the confiscation of achieved economies would disappear; confidence that reward would follow successful endeavor would be renewed. Investors would be less exacting in respect to immediate returns if relieved of the limitations, actual or threatened, which destroy confidence in the future.

The confidence of the investing public in industrial organizations is unimpaired, their values reflecting the general condition of business; railroad values are unresponsive to the general conditions of business; the investing public has lost all confidence in them. Railroading is no longer a business, it has become a calamity.

But it is not alone the railroads that are being destroyed; the very vitals are being torn from the body of our liberties, while the temptation held out to the producer to loot the savings of those who have invested in railroads is destroying the foundations of justice and morals upon which alone an orderly government can be maintained.—*Extracts, See p. 35.*

Con

The National Grange

T. C. Atkeson, Washington Representative

THE National Grange has a long record of activity establishing a very definite policy with regard to the public relations of those engaged in railroad transportation. Since its earliest days the Grange has insisted that the interest of the whole public was of paramount importance and that this interest was expressed by the right of complete Government control over railroad transportation. The legislative authority underlying the Interstate Commerce Commission and its activities is based upon the acceptance of this principle by Congress and the courts. The Grange was very largely responsible for the creation of the Interstate Commerce Commission.

The Grange does not believe in subsidies or guarantees. A resolution adopted in 1921 opposed as a "basic economic error" any Government guarantee of earnings in any form at any time to any private industry.

At the same time, the Grange asked for the consolidation of the Railroad Labor Board with the Interstate Commerce Commission, thereby expressing its view that neither owners nor workers should be represented upon this Board but that it should operate in the public interest and prevent the bargaining between railroad capital and railroad labor for the exploitation of the public.

In 1922 the Grange asked for an adjustment of railroad rates "so that return for labor and capital in the essential industries of agriculture and transportation may be more nearly equal," and urged the appointment of representative farmers on the Interstate Commerce Commission.

The established Grange policy of the right of complete Government control over transportation leads directly to the right of the Government in the public interest to compel consolidation of feeder lines and trunk lines when it can be shown that such feeder lines cannot be adequately operated without such consolidation. It is undisputed that the welfare of those residing in many agricultural areas depends upon the adequate operation of the feeder railroad lines reaching such areas and the activities of the Government cannot stop short of taking every essential step to keep such transportation facilities in adequate operation.

Clyde M. Reed—cont'd from p. 20

In other words, grain and hay are bearing a proportion of the transportation burden based upon their value having the same relation to the value of other commodities that obtained in 1913. This is an unjust apportionment. It affects the farmer directly. It affects the whole West, whose great industry is agriculture. It has had a part in slowing down the return of normal conditions in the grain states.—*Extracts.* *See p. 35.*

Howard Elliott—cont'd from p. 20

rates on 7 per cent of the tonnage, enough to make up for reductions in revenue on basic and heavy articles comprising 93 per cent of the tonnage.

Better and more prompt results for the public could be obtained if railroad managements familiar with local conditions—anxious to go as far as possible to meet the needs of their customers—were allowed to make rates or prices subject to investigation and review by the Interstate Commerce Commission.—*Extr.* *See p. 35.*

The Committee of Eastern Railroads Questions the National Conference on Railroad Valuation

The Questions

The Eastern Railroads

Committee on Public Relations

J. P. Haynes, Traffic Director, Chicago Association of Commerce

IT is important that an unequivocal statement of the plans and purposes of this conference should be given to the public in order that such steps may be taken as circumstances seem to require. To elicit such a statement we, representative shippers, vitally concerned in good railroad service, demand categorical answers to these questions:

To Senator Robert M. La Follette and Associates:

1. You have alleged that the public is not represented in valuing the railroads. Tentative valuations are made under direction of the Interstate Commerce Commission, and must be submitted to the commission, to the Attorney-General of the United States, and the governors and public utility commissions of the states concerned for approval or protest. If these governmental agencies do not represent the people, whom do they represent?

2. Do you contend that the public interest would be better served in some other way than by these governmental agencies?

3. Senator La Follette made the assertion in the Senate that all the railroads in the United States could be valued at an expense not exceeding $2,400,000.

Valuation has been proceeding for ten years. To June 30, 1922, this work had cost the government $23,058,000 and the railroads $62,885,000, a total of $85,945,000. Will you kindly explain the remarkable discrepancy between this promise and its fulfillment?

4. Would the country be justified in undergoing the period of agitation, uncertainty, and business disturbance which would be an inevitable concomitant of the revaluation you propose?

5. Valuation is a feature of the program of railroad regulation which includes the limitation of earnings, which is based on the hypothesis that railroads are "affected with a public interest"—that is, that they are a public necessity.

Is not food, therefore, "affected with a public interest," and should not its production, the prices at which it is sold, the profits made thereby, and the quantity which may be eaten also be regulated by law?

6. Granting that railroads are affected with a public interest, is it not equally true that they are also affected with a private interest?

If further restrictions upon railroad earnings should make it altogether impossible to sell railroad stocks, how are extensions and betterments to be provided?

7. Lenders of money on farm mortgages receive 6½ per cent interest or more. Investments in railroad stocks are limited to 5¾ per cent. Are owners of capital not likely to invest all their money in other enterprises to the total exclusion of railroads? If they do, how are railroads to be financed?

8. Will the time not come when earnings will no longer be sufficient to pay interest, a contingency which would throw all railroads in the hands of receivers? What have you to propose to avert such a contingency?

9. It seems proper to ask you to explain why Canada's government railroads have an annual deficit of $100,000,000 to be made up by taxpayers, while the Canadian Pacific rail-

(*Continued on page 33*)

The Reply

National Conference on Valuation of Railroads

Called by Senator La Follette, Chicago, May 25–26, 1923

Committee on Permanent Organization

BRIEFLY these questions may be answered as follows:

1. The purpose of the conference is to organize for a united front the governmental and private agencies who really represent the people; and (2) In this manner it is contended that the public interest is best served.

3. Senator La Follette had no control over the expenditures or methods of conducting the valuation proceedings.

4. There is not the faintest suggestion that there should be a revaluation, but the conference desires that the Interstate Commerce Commission shall comply with the law, and make a complete report of all the elements of value which the Commission is required to consider and make a fair and just valuation.

5. Transportation is a monopolized public service carried on by corporations operating under public grants. Any industry monopolizing an essential may be properly subject to public regulation. If there is free competition, there is no necessity for regulation.

6. It is the prevailing opinion in the conference that a practical guarantee of a return upon prudent investment in public utilities will increase the ability of the utilities to finance extensions.

7. Railroad and other public utilities if soundly managed and financed have always been able to obtain money at a lower rate than enterprises of greater risk.

8. If anything will prevent further railroad receiverships, it will be the elimination of financial exploiters from control of the transportation system.

9. The question makes assumptions regarding private and governmental operation of Canadian railroads which are untrue, and therefore its conclusions are false, and do not merit a detailed reply.

10. The farm organizations claim that there has not been an increase, but as is well known an enormous recent decrease in rural wealth, caused largely by the burdens placed upon agriculture by excessive transportation rates.

11. The conference in its membership and conduct has demonstrated its solid purpose, and its non-partisan devotion to the public interest. The only "press agent stunt" that has been staged has been the effort to fill the papers with misstatements of the purposes and probable results of the conference.—*Extracts.*

RESOLUTIONS ADOPTED BY THE CONFERENCE

Whereas, the Interstate Commerce Commission is engaged in fixing the valuation of the railroads, but has failed to comply with many of the mandatory requirements, and

Whereas, this valuation work is nearing completion, and

Whereas, the ascertainment of the actual private investment prudently made in the railroad properties is the duty imposed upon the Commission and its failure to perform this duty will make it impossible to protect the public interest, and

Whereas, the principles established must necessarily have a vital bearing upon the determination of fair and just rates and charges and it is important that the public be protected against excessive rates and charges for these services.

Does Valuation Affect Rates?

Pro

Clifford Thorne
Attorney, American Farm Bureau Federation, 1922

IN 1920, before any final valuation had been ascertained by the Commission and sustained by the courts, Congress suddenly required the Commission to make a tentative finding as to the total value of American railroads and to ascertain what 5½ and 6 per cent would produce on such valuation. The Commission was instructed to make rates sufficient to produce that return upon the present value of American railroads. This forced a huge guess, and the result of that impromptu appraisal was a finding of a total value of $18,900,000,000. The railroads claimed a total value of $20,600,000,000, this being their alleged book value or cost of road and equipment. We submit:

First. The so-called property investment account or book value does not represent either the original cost or the present value of American railroads.

Second. The valuation determined tentatively by the Interstate Commerce Commission last year is approximately $2,000,000,000 in excess of the par value of all of the stocks and bonds of American railroads outstanding in the hands of the public at that time.

Third. The valuation determined tentatively by the Interstate Commerce Commission last year was approximately $7,000,000,000 greater than the market value of all stocks and bonds of American railroads outstanding in the hands of the public at that time.

The railroads are not even satisfied with a return on the present value of all the land they use throughout the United States, but also demand a return upon a fictitious value which is equal to 50 to 70 per cent greater than the present value of all their real estate in the cities of the country and they demand a return on a value of their land outside of city limits equal to approximately three times the value of adjoining farm land at the present time. If their right-of-way runs through farm lands worth $300 an acre at present prices—they demand the government to fix a value of their right-of-way in that section at $900 per acre. In other words, not content with a return on their actual investment, and not content with a return on the present value of their land they want a return on three times the present value of their land, and on three times the present value of their land outside of city limits and 50 to 70 per cent greater than the present value of their lands within city limits.

We do not believe the Congress in passing the law had in mind the addition of a multiple valuation in addition to or in excess of the present value which is purely a gift made to the railroads by Congressional mandate. The question of replacing the right-of-way, so far as the land is concerned, is not involved in the valuation, for the right-of-ways are not to be reconstructed or laid out again. Most of them have been in existence for years and therefore the reconstruction theory falls of its own weight.

There never was a time when the principle of a multiple or hypothetical valuation has been so thoroughly disproven as at present. Railroads are fast coming to realize that traffic can bear only a certain charge—that there is a dead line leading into the field of diminishing returns. Overcapitalization, such as this hyper-valuation provides means only one thing—that the producers—the shippers—must pay higher transportation rates.—*Extracts, A. F. B. See p. 35.*

Con

C. H. Markham
President, Illinois Central System.

THE only guarantee of earnings is the constitutional guaranty against confiscation of private property. In attempting to uphold this constitutional guaranty, the Transportation Act of 1920 directs the Interstate Commerce Commission to set railway rates at a level to earn a certain rate of return upon the value of railway property as determined by the Commission itself; but that rate of return has not been realized since the enactment of the Act.

As for the effect of valuation or investment upon rates, consider this: Rates are set, first of all, to cover the costs of performing railway service, and if there is anything left after these costs are paid it is considered as constituting a certain percentage of return upon the value of that property. Certainly the value of the property can have no influnce upon the great bulk of costs that have to be paid if the railroads are to run; the only factor in railway accounting that can be influenced in any way by valuation is the comparatively small amount in excess of the costs of operation which can be considered as the earnings of the property. In 1922 this amount was about 14 cents out of every dollar that the railroads took in, and it constituted a return of 4.14 per cent upon the tentative valuation. If that valuation had been reduced a third, the same return of 4.14 per cent would have been realized by earnings of about 9½ cents on the dollar, which would have allowed a reduction of about 4½ cents on the dollar in rates and fares paid by the public. A 4½ per cent reduction in freight and passenger charges certainly would mean little to the public, particularly when it was accomplished by wiping out a third of railway value and by wiping out a third of the income of the hundreds of thousands of railway investors. No reduction in rates is worth while if it wrecks our railroads.

If there were "water" in railway securities and railway securities had any influence on railway rates, the same reasoning would apply. So small a fraction of railway charges would be affected one way or the other that the gain to the public would be nothing near what the railroad critics estimate or allow their hearers to estimate. As a matter of fact, the amount and condition of railway securities have no effect at all upon rates. The Interstate Commerce Commission's valuation figures, upon which the rate of return is figured, apply only to the actual value of the property as directed by the Valuation Act of 1913. The valuation figure, as determined by the admittedly impartial Interstate Commerce Commission after thorough investigation, is more than $2,000,000,000 in excess of the par value of all railway capitalization outstanding in the hands of the public.

If any immediate cheapening of railway rates is desirable, the way for the public to attain it is to help the railroads cut down operating costs and taxes—the latter a burden of ever-increasing size. In ten years, from 1912 to 1922, for example, taxes on the Class 1 railroads of the United States almost tripled. In 1912 they were $109,445,407, and last year they were $304,885,158—close to $3 for every man, woman and child in the country. In contrast with this 200 per cent increase in taxes, it is worth noting that in about the same period the investment per mile of railroad increased only 27 per cent and the number of miles less than 8 per cent.—*Extracts, See p. 35.*

Government Ownership of Railroads?

Pro

J. A. H. Hopkins

Chairman, Executive Committee, Nat'l Bureau of Information and Education

THE issue under discussion is Public Ownership *vs.* Private Ownership.

Should our arteries of distribution, the only channel through which the necessities of life can reach 110,000,000 people, be owned by the people themselves, and administered through their governmental representatives to render service at cost, or should they be farmed out to private corporations and operated for individual profit?

In advocating Public Ownership are we departing from the traditions of our forefathers?

We are not. Our waterways, highways, and our toll roads, which for many years were our only channels of distribution, were and still are publicly owned.

Are these any grounds for claiming that public ownership would be confiscatory?

None whatever. The only proposition under consideration contemplates the purchase of the railroads by the government at a fair valuation.

With the value once determined, the government should issue bonds at not exceeding 4½ per cent interest and offer to each holder of railroad securities a bond equal to the par value represented by the average market quotation for his particular security during the two years previous to the taking over of the railroads by the government.

The taxpayer would save the difference between the 4½ per cent on the government bonds and the average rate at which the railroads are putting out their securities, say 6½ per cent. By this single operation of government financing instead of railroad financing there would be an annual saving in operating overhead costs of 2 per cent on the total valuation.

The facts relative to the railroad situation lead to the following inevitable conclusions:

That the Right of Highway, like the Right to Tax, is a sovereign power inherent to government itself;

That in departing from this principle and farming out these rights to private corporations to be operated for individual profit we departed from the traditions of our forefathers and embarked on a course which brought the country to the brink of national disaster, and is today working great injury to every man, woman, and child who is dependent upon an efficient, economical transportation service for a livelihood;

That under private ownership the railroads have signally failed because no private group of men, however wise or however virtuous, can be safely trusted to discharge the duties developing upon them in the conduct of such a vast enterprise as our national transportation service when their personal profits are involved; nor can they be expected to withstand the temptations to which this opportunity subjects them;

That consequently the railroads have furnished inadequate and grossly expensive service and distributing facilities;

That they have through the special economic privileges which they enjoy, established and control the industrial monopolies and trusts which, with a realization of their own power, have consistently defied the authority of government; and to serve their own selfish purposes have raised the cost of living to ruinous figures.—*Extracts.* *See p. 35.*

Con

Alfred P. Thom

General Counsel, Nat'l Ass'n of Railway Executives

THE institution of private property is the cornerstone of credit. At no time in our history have attacks attacks upon it, either covert or confessed, been so constant or so insistent. It is true that these attacks have not as yet taken among us the form of attacks on all property, but they have begun with the property of the railroads.

To the charges that railroad management is inefficient and that the transportation systems have broken down the railroads are furnishing complete refutation by the service which they are in fact rendering. Despite the obstacles placed in the way of efficient transportation service by the cumulative effect of the coal miners' strike and railway shopmen's strike last year, the railroads during the 47 weeks between July 1, 1922, and May 26, 1923, handled the greatest volume of traffic ever transported in the history of the country during any corresponding period.

As to the charge of too high rates, a governmental tribunal has been created to deal with these questions and there they may be safely left—there they must be left unless they are to be relegated to the chaos of frenzied legislation.

Railroad rates have not prevented farm lands in the agricultural districts west of the Mississippi from increasing in value from $1.25 to $400.00 or $500.00 per acre. They are not at this time preventing or retarding the movement of traffic, for traffic is moving in greater volume than ever before in the history of American transportation, and the rates on which it moves are the lowest in the world.

From governmental sources it is found that the transportation charge on farm products constitutes only 6.6 per cent of their value on the farm.

The increase in railroad rates made in August, 1920, did not cause the drop in prices of farm products or of other commodities which came after the war, for the price decline had assumed substantial proportions and was far advanced before the increase in railroad rates took effect.

Under a system of government ownership, the rates would still have to be fixed by a governmental tribunal—just as now—the only difference being that then, on one side, would be arrayed all the taxpayers demanding that those who use transportation shall pay for it in the proportion to the use they respectively make of it, and, on the other, some of the users of transportation would be asking that a substantial part of the burden be shifted from their shoulders to the shoulders of the general taxpayers.

In the event of government ownership, the railroads would no longer be taxpayers. This would mean that more than three hundred millions of dollars per year, now paid by the railroads in the way of taxes, would have to be made up to the State and Federal governments from other sources.

The ten billions of dollars of values which it is proposed to take away from the railroads are somewhere in the credit system of our country. This vast sum is represented in the assets of insurance companies, of savings banks, of business institutions of all kinds, and of a great multitude of individuals. When it is taken away from the railroads, it is automatically withdrawn from the support of the present credit structure. It would be wise for all interested in the financial stability of our affairs, to pause and consider what the consequences would be of the success of this vast scheme of confiscation.—*Extracts.* *See p. 35.*

Government Ownership of Railroads

Pro

The Nation

A Weekly Magazine, New York City

WHY does the Nation favor government ownership of railroads?

Because we believe that the present system of private ownership is on the verge of collapse. The principle laid down in the Esch-Cummins law that the railroads shall be combined into regional groups is an admission that the era of competition is over. The control of the railroads has more and more passed from the hands of the stockholders, and the roads have become more and more the property of the banks or the tools of unscrupulous Wall Street speculators. Even more important is the growth of vested interests based upon special railroad privileges, such as rebates, which still continue. Experience has now definitely proved that a major operation is necessary to separate these parasites from the railroads.

But was not government management of the railroads a failure in war time, with a deficit of $1,800,000,000 according to James C. Davis, director-general of railroads?

The testimony of men like Mr. McAdoo and Mr. Walker D. Hines runs directly counter to this view. The truth is that the railroads were on the point of collapse when taken over by the government. For one reason or another they had been starved. The railroads were run by the government not to make money, but to win the war. As a test of government operation the experiment is of little or no value, since the attendant conditions will presumably never be repeated.

Will not government ownership of railroads necessarily mean establishment in the vital arteries of traffic of the paralyzing lack of initiative and the general inefficiency and red tape characteristic of the post office, the customs service, and other forms of government business?

This will not necessarily follow, but it is a risk which will have to be run. If the railroads are handled like the scientific bureaus of the government and kept out of politics they will be well run. They are the bases of the business life of the country, practically every citizen being more or less dependent upon them for service or having personal contacts with them; hence the presumption is fair that public attention could be rapidly and effectively focused upon maladministration of them.

Why would not the same end be better achieved by more careful regulation?

Regulation has thus far failed to safeguard the public and insure cheap and effective service. It has not insured prompt handling of the crops in the Northwest this year, nor the adequate handling of coal in the East. Railroad presidents declare that if there is further governmental regulation private management cannot continue.

Does the Nation urge government operation as well as ownership?

It does not and will not unless it is proved that it is impossible to work out some plan of joint operation by a board composed of representatives of the railroad workers, the public, and the government as suggested in the Plumb Plan.

Would not so large a body of civil servants become politically a danger to the republic?

The existing army of 560,863 civil employes is not a menace. The railroad brotherhoods already have great political power. Moreover, civil servants in this country have never yet voted as a body for or against any candidate.—*Extracts, February 21, 1923.*

Con

Chamber of Commerce of the United States

George A. Post, Chairman, Railroad Committee

THE Chamber of Commerce as a result of a referendum vote has recorded its opposition to government ownership of railroads. Among the reasons urged against government ownership and operation are:

First: Under government ownership the development of railroad facilities would depend upon Congressional appropriations which would prevent the anticipation of the transportation needs of the country. Appropriations would not be made in the amount and at the time needed to insure adequate development of the railroads. Political considerations might also control the amount of appropriations and the objects for which they were made.

Second: The interest rate which the government would have to pay to secure railroad capital would not be lower than the rate paid by corporations. To acquire the railroads the government would have to pledge its credit for eighteen to twenty billions of dollars, at a time when other large financing must be done. It would be difficult for the government to dispose of the securities required to purchase the railroads, and it would be necessary for the government to secure from five hundred million to one billion dollars of new capital each year. If the government were to assume the burden of financing the railroads at the present time, when the war debt is so large, its interest rate would necessarily be as high as, if not higher than, the rate at which corporations could secure capital.

Third: Government operation is seldom, if ever, as efficient as corporate management. Competition, the incentive to efficiency and progress in private enterprises, is absent from the government administration of affairs. Individual initiative is less, bureaucratic methods are more characteristic, and the services rendered are less progressively efficient.

Fourth: While the government would presumably select officers and employes by means of efficiency tests, political influences would almost certainly be given weight in selecting men for official positions.

Fifth: Unless the government adopted the policy of fixing low rates and fares with the intention that any resulting deficit from operations should be placed as an increased burden of taxes upon the general public, rates and fares would be higher under government than under private operation. Under government operation expenses rise in relation to income, and the charges imposed by the government, if a deficit is to be avoided, must be higher than those which it would be necessary to permit railroad corporations to make.

Sixth: The political effect of government ownership and operation of railroads in the United States might be serious. There are now about 500,000 employes of the government. The addition to the public services of 2,000,000 railroad employes, the majority of whom are voters, would constitute a force of about 2,500,000 government employes interested in controlling the policy of the government as regards wages, hours and conditions of service. Such a body of employes might easily exercise a controlling influence upon state and national politics.

The Railroad Committee of the Chamber of Commerce recommends adherence to the policy of corporate ownership and operation of railroads under a comprehensive system of government regulation.

Recent Super-Power Conference Emphasizes Electric Power Possibilities

By Hon. Herbert C. Hoover
Secretary, U. S. Department of Commerce

Extracts from Statement by Mr. Hoover to the Super-Power Conference, New York City, October 13, 1923.

ENGINEERING science has brought us to the threshold of a new era in the development of electric power. This new stage in progress is due to the perfection of high voltage, longer transmission, and more perfect mechanical development in generation of power. We can now undertake the cheaper sources of power from water sources further afield, such as the St. Lawrence, and cheaper generation from coal through larger and more favorably placed generation plants.

This superdevelopment of great areas of cheaper power has been dramatized by those less familiar with the problem, as the construction of great power highways traversing several states into which we should pour great streams at high voltages from great giant water power or central steam stations to be distributed to the public utilities and other large users along the lines of these great power streams. This, indeed, serves perhaps to picture what is meant by super power development.

The natural development of this situation lies first in the inter-connection of power supplies between the existing great utility systems, and, second, in common action for the erection of large units of production at advantageous points for the mutual supply of two or more of the present systems and in the development of such great water powers as the St. Lawrence.

Three years ago the federal government undertook an exhaustive study * into the possibilities of more comprehensive and coordinated development in the Northeastern states. This survey demonstrated that the savings in these eleven states of a coordinated and fully developed electrical power system by the time it could be erected could amount to a conservation of about 50,000,000 tons of coal per annum; that an annual saving could be made of over $500,000,000 per annum at an additional capital outlay of about $1,250,000,000.

With the crowding of our population in large areas we are faced with most difficult questions in the development of terminal facilities, the handling of traffic on our railways. There has been some electrification of transportation. The engineers who have made systematic superpower surveys are convinced that over 40% of the mileage of the railways in this territory could be electrified at substantial economies in operation and with enlarged service if we should secure this greater and more economical power development.

To secure the rapid adoption of these demonstratedly possible results is of profound public importance. Every time we cheapen power and centralize its production we increase the standards of living and comfort of all our people.—*Extracts.*

* Super-Power System for the region between Boston and Washington, 1921. 261 p. (Geological Professional Paper. 123.)

Authority of the Federal Government Over Water Power

By O. C. Merrill
Executive Secretary, Federal Power Commission

Extracts from Recent Addresses by Mr. Merrill

THE authority of the Federal government over water power rests on three fundamental bases. The United States is owner of the public lands, and these lands may be used or disposed of only in such manner and for such purposes as Congress may direct. Through its power to regulate commerce Congress has jurisdiction over all navigable waters of the United States and may determine what structures may be erected in or over them and under what conditions. The manner in which international waters may be diverted and used is the subject of treaty between the nations concerned, and the sole power in this country of making and enforcing treaties is in the Federal government. Through these three sources of authority the Federal government may exercise some measure of control over the disposition of eighty-five per cent of the potential water powers of the United States.

THE FEDERAL WATER POWER ACT

The Federal Water Power Act which created the Federal Power Commission was approved June 10, 1920. The Act provides for issuance of licenses by the Commission for fixed terms not to exceed 50 years at the termination of which the United States shall have the right, if it then possesses the constitutional and statutory powers, to take over any project upon payment of the net investment therein, an amount consisting of actual cost of the properties less depreciation earned over and above a fair return. If the United States has not the power or does not wish to exercise it, it may transfer the license to a State or municipality upon similar terms, or issue a new license under the provisions of then existing law.

Prior to the passage of the Federal Water Power Act projects involving some 1,400,000 h. p. had been constructed under authority given by the Federal Government. Of this amount about 800,000 h. p. may be credited to the public lands and reservations, 200,000 h. p. to the boundary streams, and the remaining 400,000 h. p. to interior navigable rivers. Of the latter amount, slightly more than 60,000 h. p. was developed after 1906. This was the aggregate accomplishment of earlier legislation during a period of more than 20 years.

The Federal Water Power Act has been in force less than three years. The new construction already completed or involved in projects upon which construction has already started aggregates 1,470,000 h. p. of proposed installation.

According to the best estimates available there were approximately 9,000,000 horsepower installed in all the water-power plants, electric and otherwise, in the United States in 1920. Since that time there have been completed or put under construction under authority of the Federal Water Power Act alone projects totaling two and a half million horsepower. Some of these, of course, will take several more years to complete, but it can safely be said that we are now in the period of the greatest water-power development we have ever known. The possibilities of the near future are indicated by the fact that applications have been filed with

the Federal Power Commission for projects involving an installation of 21,500,000 horsepower, and that permits and licenses have been issued for an aggregate of 7,000,000 horsepower. Notable work has also been done in the field of transmission. Only four gaps with a total of about 25 miles require to be closed in order to have an interconnected transmission system along the Pacific Coast from Canada to Mexico, a distance of some 1,400 miles. It is not improbable that within ten years, if certain interstate problems are settled, similar interconnections will have been made through Idaho, Montana, Utah, Colorado, and Arizona, with junctions at each end with the Pacific Coast lines, giving an interconnected circuit of more than 3,000 miles. In the South Atlantic States interconnection has been affected through Alabama, Georgia, North and South Carolina and Tennessee, and will in the near future be extended into Kentucky, the Virginias and Ohio. It is only a matter of time, and that not far distant, when through the natural expansion of adjacent local groups of plants and lines we should have in the eastern United States a superpower system rivaling that of the Pacific Coast.

A popular misconception arises from the failure to distinguish between operating costs computed at the generator switchboard and such costs computed at the consumers' meters. Furthermore, because water costs nothing it is assumed that hydroelectric power must necessarily be much cheaper than steam power. Water is cheaper than fuel, it is true; but a hydroelectric plant with all its accessories may cost several times as much as a steam plant of equal capacity, and in addition may require an expensive transmission line, substations and steam reserve.—*Extracts.* *See p. 35.*

Present Possibilities of Railroad Electrification

THE apparently higher cost of the electric locomotive as compared with steam, plus the cost of the electric distributing system and substations is responsible for the prevalent belief that railroad electrification is an expensive undertaking which should be deferred until made absosultely necessary by reason of local or other conditions, such as congested terminals, long tunnels, etc.

Many of the large trunk line system, whose average annual increase in traffic is at the rate of five to seven per cent, may find it possible to carry out extensive electrification work with little additional capital over and above normal requirements after the first two or three hundred miles are equipped. Extensions to the electric system may be paid for by diverting to that use the money which would otherwise be spent for new steam locomotives and their accommodation, together with the savings in operating cost effected by the first installation.

The three necessary requirements of a motive power equipment capable of successfully meeting the transportation requirements of the country are briefly:

1—AVAILABILITY FOR SERVICE

Leaving out of consideration the smaller roads, operating records of some of the more important systems show that each road engine is available for service from 25 to 35 per cent of the time under normal and favorable conditions and that the full time of five men on an average is required on each locomotive to make necessary running repairs, keep it clean and properly oiled, and to give it a periodical overhauling in the back shops.

Such an engine in freight service will ordinarily handle about 35,000,000 trailing ton miles per annum and while doing so will deliver about 750,000 h. p.-hr. per annum at the draw bars. Reduced to a unit basis, the cost of steam locomotive repair and cleaning service, including material and labor, is found to be 1.21 cents per h. p.-hr., which is about 10 times the cost of repairs and up-keep of the entire motive power equipment of an electric motor driven industrial plant and 2.5 times that of an electric haulage system of equal capacity, including repairs and maintenance of the distributing system, transmission line and substations.

In contrast to the poor performance of the steam locomotive, operating records show that electric locomotives will on an average spend two weeks each year in the back shop for repairs and general overhauling. It is, therefore, available for service 90 to 95 per cent of the time—a ratio of about 3 to 1 as compared with the steam locomotive.

2—POWER POSSIBILITIES

The use of the more powerful locomotives made available by electrification will permit the capacity of a single track road to be increased 75 to 100 per cent, thus postponing the necessity of double tracking for 12 to 15 years. Also the increased speed of the trains and reduction in traffic delays will add to the value of the service and reduce the possibilities of serious traffic congestion during periods of unusual activity in business.

3—ECONOMIES IN OPERATION

There are many indirect reductions in operating costs which will follow the adoption of the electric system. These will include such items as reduced maintenance of track and structures due to decreased axle weights, the use of shorter wheel bases and improved riding qualities of the locomotives; postponement of necessity for double tracking; savings in maintenance and cost of water supply, shop equipment, round houses and turntables; reduction in overtime caused by delays; practical elimination of ruling grade problems; reduced operating costs due to reduction in company coal movements; and improved service to shippers due to increased speed and greater reliability in operation.

With no immediate prospect in sight of any material reduction in the price of labor, its output must be increased, and electric operation has demonstrated its effectiveness in this direction both on the road and in the shop.—*Extracts, G. E. R., Dec., 1922.*

Amount of Power Required for Complete Railway Electrification

THE utilization of water power is vital, as affording the only known means for effectually conserving our limited fuel supply. At the present time (1919) the water power development in the United States amounts to about 5,000,000 kw.* Knowledge as to the possible future of hydraulic development is indefinite, as many of the water power sites have not been completely surveyed. Estimates as to the presumable ultimate development vary considerably, but are around 50,000,000 kw.

The relative amount of power required for complete railway electrification is less than is usually supposed. A number of power stations capable of delivering 37,200,000,000 kw-hrs. per year, with an average twenty-four hour load of one-half the installed capacity, would have an aggregate in-

ported in 1921 by plants of 100 horsepower capacity and over, was 7,926,000 horsepower. The total for all plants is approximately 9,000,000 horsepower. One horsepower is equal to 746 kilowatts.

* The total water power development in the United States re-

stallation of approximately 8,500,000 kw. The statistics of steam and hydraulic electric power plants in the United States indicate that in 1917 there were installed, in central stations for lighting and power purposes, approximately 9,000,000 kw., in railway power stations 3,000,000 kw., and in isolated stations 8,000,000 kw., a total installed capacity of about 20,000,000 kw. It is apparent that instead of the problem being prohibitive in size, there is already installed in the country a power station capacity of over twice the requirement for operating all the railroads electrically. The power that would be required really is not excessive as compared with the electrical development which has already been accomplished.

The present tendency of modern power development, both steam and hydraulic, is towards the growth of large central power stations and interconnected distributing systems. These power stations will be situated at points of cheap coal supply or of hydro-electric development, and will furnish power for cities and industries over a wide section of country. These same systems will also furnish power for the railways in their territory.

The Montana Power Company may be cited as an illustration. This company has twelve hydraulic power stations feeding into a common distribution system at 100,000 volts. The total installed capacity is approximately 175,000 kw. with possible extensions by future development of an equal amount. Power is furnished for lighting and industrial purposes to various cities throughout the state and also to the Chicago, Milwaukee & St. Paul Railway. The average twenty-four hour power demand for the 440 miles of the Chicago, Milwaukee & St. Paul electricfication is only in the order of 15,000 kw. with a maximum of about 28,000 kw.—*Extracts. G. E. R., June, 1919.*

Milestones in the Development of Steam Railway Electrification

IN 1895 the Baltimore & Ohio Railroad Co. equipped the so-called belt line in the city of Baltimore for electric operation. This line is 3.6 miles in length and consists of about 8 miles on a single track basis. The system chosen was 675-volt direct-current, with third rail distribution.

One of the most extensive electrifications in the United States is that of the New York Central Railroad operating from the Grand Central terminal to Harmon on the main line and to North White Plains on the Harlem division. To date a total of 54 miles of route has been electrified with extra trackage bringing the electrified line up to a total of 268 miles on a single track basis.

The electric zone of the Great Northern Railway is four miles in length including the Cascade Tunnel and terminal yards at each end. Electrical operation was begun in 1909.

The equipment of the Michigan Central Railroad through the Detroit River tunnel was placed in service in 1909 and the distribution system is similar to that of the Grand Central terminal. At the present time the Detroit tunnel electrification includes 4½ miles of route with a total of 26 miles on a single track basis.

One of the best known examples of main line electrification is the Butte, Anaconda & Pacific Railway operating its 2,400-volt direct-current system between the mines at Butte and the smelters at Anaconda. Passenger service is also handled between the cities of Butte and Anaconda. The total length of the road is 30 miles or an equivalent of 122 miles, including sidings and double track. Comparative figures have been presented for steam and electric operations under similar conditions showing a net annual saving on the investment required of more than 20 per cent.

The most impressive and by far the most extensive example of steam railroad electrification in the world today is the Chicago, Milwaukee & St. Paul Railway. The initial zone selected for electrification included 440 miles of route and 580 miles of single track. A total of 30 freight locomotives and 12 passenger locomotives and two 70-ton switchers were placed in service on the original 440-mile zone. After several years of operation on the Montana divisions, it was decided to electrify the coast divisions of this road from Othello over the Cascade Mountain range to the cities of Seattle and Tacoma. The total electrified mileage of this road at the present is given as 646 miles of route and 858 miles of track. Altogether 532 miles of 100,000 volt transmission is maintained by the railroad company along the right-of-way.—*Extracts. G. E. R., June, 1922.*

It was reported August 10, 1923, that Henry Ford is planning to electrify the whole 450 miles of the Detroit, Toledo and Ironton Railroad, and that the road will be extended to the Ford-owned coal mines in Kentucky. The D. T. & I. will be the first example of electrification of an entire railroad. Formerly electrification of steam railroads has been for the purpose of meeting a specific local problem. The New York Central into the Grand Central Station, the New Haven, the Pennsylvania into New York were electrified because of statutory compulsion. The Pennsylvania at Philadelphia was electrified because the Broad Street station became congested and the more rapid movement of electric locomotives was needed to increase the effective capacity of the terminal. The Norfolk and Western R. R., and the Virginian R. R. were electrified for short stretches, in order to increase the capacity of the mountain-climbing tracks, whose number could not be easily augmented.

The total number of electric locomotives operating on Class I Steam Roads as of December 31, 1921, was 364. The number of miles of road electrified as of this date was 1,452.9. On December 31, 1923, 373 electric lomotives were reported. The final figure on the number of miles of road electrified for this date is not yet available.

Recent Government Publications of General Interest

Editor's Note: The review of Government Publications for this month will be published in the November number of the CONGRESSIONAL DIGEST.

Notes on the Constitution

By Hon. Wm. Tyler Page

A series of twelve articles setting forth the fundamental principles of the United States Government as prescribed in the Constitution

Eighth Article—What the States May Not Do—Part I

ARTICLE I, Section 2 of the Constitution provides: *The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.**

No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

In these Clauses of Article 1, Section 2 of the Constitution the States are forbidden to make their elections for Members of the United States House of Representatives less popular than for the so-called lower house of their own Legislatures, and are forbidden to elect a person as Representative in Congress who has not been for seven years a citizen of the United States, who is not at least twenty-five years old, and who is not an inhabitant of the State. By Article 1, Section 3, paragraph 3, a Senator shall have attained to the age of thirty years, been a citizen of the United States for nine years, and be an inhabitant of the State, when elected.

The right to vote for Members of the Congress is not derived merely from the Constitution and the laws of the State in which they are chosen, but has its foundation in the Constitution of the United States, and is a right which Congress has the power to protect by law. In other words, electors for Representatives in Congress do not owe their right to vote to the State law in any sense which makes the exercise of the right to depend exclusively on the law of the State.

An inhabitant of a State, within the meaning as here used, is one who is *bona fide* a member of the State, subject to all the requisitions of its laws, and entitled to all the privileges and advantages which they confer. A Representative may be elected from a Congressional District in which he is neither a voter nor a resident, but from another part of a State, provided he is a *bona fide* inhabitant thereof. This has happened infrequently. Where two Members were to be elected from one district a State law providing that they should be elected from different localities was held void on the ground that no qualifications additional to those prescribed in the Constitution of the United States could rightfully be required by the States.

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

Article 2, Section 2, provides: *He* (the President) *shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur.*

By these clauses the States have surrendered the treaty-making power to the general government, and have vested it in the President and Senate; and when duly exercised by the President and Senate, the treaty resulting is the supreme law of the land, to which not only State laws but State constitutions are in express terms subordinated. No power under the Government can make "any treaty or alliance" entered into by a State valid, or dispense with the Constitutional prohibition.

Prior to the adoption of the Constitution, its framers had had experience with a Confederation of States, which proved to be a rope of sand, and it was "in order to form a more perfect Union" that the Constitution was ordained. No other Confederation was then thought of, but the possibility of one was provided against. By reason of this Clause the Confederation known as The Confederate States of America, formed of certain States, was not recognized as having any legal existence by the States which adhered to the Union of the States as formed under the Constitution. And the Supreme Court held in 1884 (112 U. S. 476) that the notes and bonds issued in its name and for its support had no legal value as money or property except by agreement or acceptance of parties capable of contracting with each other, and could never be regarded by a United States court as securities in which trust funds might be lawfully invested.

We have seen in previous notes that Congress alone may declare war and grant letters of marque and reprisal; and the Constitution not being satisfied with this positive grant of specific authority to Congress, also expressly prohibits this power to the States, probably for the reason that to grant letters of marque and reprisal would lead directly to war, a power which is expressly given to the Congress and here denied to the States.

For the purpose of providing the same currency, having a uniform legal value in all the States, the power to coin money and regulate its value was conferred upon the federal government, while the same power was withdrawn from the States. The States can no longer declare what shall be money or regulate its value. Whatever power there is over currency is vested in Congress.

It was in consequence of the unrestrained issues of paper money by the Colonial and State governments, based alone upon credit, that the emission of bills of credit by the States was prohibited, and the proper definition of the term was not founded on the abstract meaning of the words, "No State shall * * * emit Bills of Credit," so as to include everything in the nature of an obligation to pay money, reposing on the public faith and subject to future redemption, but was limited to those particular forms or evidences of debt that had been abused to the detriment of both private and public interests. To constitute a bill of credit it must be issued by a State, on the faith of the State, and be designed to circulate as money. It must be a paper which circulates on the credit of the State, and is so received and used in the ordinary business of life.

Bills of State banks, not resting on the sole faith and credit of the State; bills issued by a State bank in which the State is the only stockholder, when they are drawn on the credit of a particular fund set apart for that purpose; notes issued by a State bank, the ultimate redemption of which is pledged by the State, not upon State credit, but upon a fund created for that purpose; an auditor's warrant for money due; tax receivable coupons; and notes issued by municipal corporations, were held to be not bills of credit within the meaning

(*Continued on page 35*)

* Notes on this Clause also appear in the June, 1923, number of the Congressional Digest, and it is here further commented upon from another viewpoint.

The Supreme Court of the United States

EDITOR'S NOTE:—With Vol. 3, No. 1, the CONGRESSIONAL DIGEST will begin a new department devoted to reviewing briefly the current decisions of the U. S. Supreme Court which are of general public interest. The June, 1923, number of the CONGRESSIONAL DIGEST printed the provisions of the Constitution of the United States upon which the Judicial Branch of our Federal Government rests. This number contained an account of the U. S. Supreme Court and the system of inferior federal courts, the relation of the Judicial Branch to the Legislative and Executive Branches of the Federal Government, and the relation between the Federal Judiciary and the States. The U. S. Supreme Court, its present procedure and work, were also described, together with a brief summary of a number of important decisions of the Court during the October, 1922—June, 1923, term.

The U. S. Supreme Court Convenes

THE Supreme Court of the United States convened at following the recess which began June 1, 1923. This 12 o'clock, October 1, 1923, for the annual session term of the Court will continue with recesses from time to time until next June.

The full membership of the Court was present, as follows: Chief Justice William Howard Taft, Associate Justices: Mr. McKenna, Mr. Holmes, Mr. VanDevanter, Mr. McReynolds, Mr. Brandeis, Mr. Sutherland, Mr. Butler, and Mr. Sanford. The session was brief and was confined to motions on pending cases and admissions of attorneys to practice before the Court. In accordance with a long established custom the Court delivered no opinions on the day of convening for the annual session, but, after receiving such motions as were offered, adjourned and proceeded to make a formal call upon the President at the White House.

The Docket

The day following the convening of the annual session the court proceeds with the hearing of arguments in cases, the call starting at No. 1 on the docket and proceeding during the week. The call of the docket, therefore, began October 2.

A total of 580 cases is waiting disposition. Of these 368 were brought over from the last term of the Court, which ended in June. During the recess some 200 or more cases were docketed most of which represented requests for permission to bring up for review cases disposed of in lower courts which could not be brought up as a matter of right under the writ of error.

Since the opening of the Court's new term, October 1 to October 19, no cases of general public interest have been decided. The Court will recess from October 22 to November 12.

Cases of General Interest Awaiting Decision

When the Court adjourned last June it carried over under advisement fully submitted and ready for decision 20 cases in which the court's decision may be expected any time after it reaches its first opinion day, October 8. Four of these present attacks upon the constitutionality of the alien land laws of California and Washington (referred to in CONGRESSIONAL DIGEST, July-August number); four question the taxability of so-called "Massachusetts trusts" under federal statutes, and the others include controversies arising out of the use of the water of Bitter Creek, Wyoming, for irrigation purposes; what counties may do with money paid them by the federal government under forest ranger laws, brought by King County, Washington, against Minnesota for damages growing out of flood conditions along the Bois de Sioux River; the constitutionality of North Dakota's grain-grading act; two cases involving the fight of Texas to prevent the abandonment and dismantling of the Eastern Texas railroad; the liability of stockholders of a national bank for its obligations after it had been sold to another national bank, and three cases affecting gas rates in San Francisco, brought by the Pacific Gas & Electric Company.

The Committee of Eastern Railroads Questions the National Conference on Railroad Valuation

(*continued from page 25*)

The Questions—cont'd

way, under private ownership, has never failed to pay an annual dividend and has paid 10 per cent for years.

10. According to Agricultural Department statistics, the value of farm property increased nearly four-fold, from $20,439,901,000 to $77,924,100,000, in the twenty years from 1900 to 1920, while the value of farm products increased correspondingly in the same period from $5,009,595,000 to $18,263,500,000. Can there be anything very seriously wrong with a transportation system which has made possible so great an increase in rural wealth?

11. Assuming that railroad valuation is too great by $7,000,000,000, rates based on a valuation reduced $7,000,000,000 would save the public less than 6 per cent in freight and passenger rates on the basis of present actual earnings, expenses, and taxes.

It is pertinent to ask if this conference is not in reality a "press agent stunt" staged to prejudice the people against the railroads?—*Extracts.* *See p. 35.*

The Reply—cont'd

Therefore, be it resolved by this First National Conference on the Valuation of American Railroads, that

(1) Representatives of this Conference shall present to the Interstate Commerce Commission a formal demand that the Commission comply fully with the requirements of the Valuation Act.

(2) If the Commission shall refuse or fail to perform its duties in the manner provided by law, representatives of this Conference shall prosecute legal proceedings to compel the Commission to obey the law.

Whereas, Congress has never adequately exercised its inherent power to prescribe and define the rules for fixing reasonable rates.

Be it further resolved, That the permanent organization of the Conference shall promote the adoption of legislation adapted to that end.—*Extracts.* *See p. 35.*

Working Out a Plan for Railroad Consolidation

(*Continued from page 13*)

sylvania system exchanges freight traffic with 157 railroad and terminal companies at over 750 points of interchange. In March, 1923, this system received from and delivered to its connections nearly 550,000 loaded cars of freight. The record will further show where each such carrier obtains its fuel supply; results of operation; capital obligations; and interest and other charges.

In addition to the above the record will contain a vast amount of evidence submitted by carriers and others dealing with particular situations as affected by the tentative plan.

The statute directs that after the hearings are at an end the Commission shall adopt a plan for consolidation and publish the same, but it may at any time thereafter, upon its own motion or upon application, reopen the subject for such changes or modifications as in its judgment will promote the public interest.

There is nothing in the law which savors of compulsory consolidation, but other paragraphs of section 5 provide that it shall be lawful for two or more carriers by railroad subject to the act to consolidate their properties or any part thereof, into one corporation for the ownership, management and operation of the properties theretofore in separate ownership, under certain conditions, one of which is that the proposed consolidation must be in harmony with and in furtherance of the complete plan of consolidation.

The Safety Work of the Interstate Commerce Commission

(*Continued from page 11*)

the automatic control of railway trains, the scope of this investigation subsequently being extended to include any devices or systems intended to promote the safety of railroad operation. From 1907 until 1912, this work was conducted through the instrumentality of a board of engineers known as the Block Signal and Train Control Board, while since 1913 it has been performed by the Bureau of Safety.

The method of procedure consists of an examination of plans of each device presented for consideration and the formulation of an opinion which is transmitted to the proprietor; if the device is in use or if an experimental installation is made, it is inspected and, when deemed desirable, practical tests are conducted. In some cases reports regarding the tests of devices are transmitted to the Congress by the Commission.

In round numbers, twenty-five hundred proposed safety devices and systems have been examined. Block signal statistics are compiled and published annually; these reports indicate that the block system was in use in 1906 on 48,743 miles of road, while on January 1, 1923, the mileage of road operated by the block system had increased to 103,144 miles.

Under a provision of the Transportation Act of 1920, the Commission has prescribed specifications for automatic train control devices and has ordered installations of devices conforming to these specifications to be made on portions of 49 railroad lines. Many of these installations are now in progress; the order requires them to be completed on or before January 1, 1925.

Bureau of Locomotive Inspection

The Bureau of Locomotive Inspection of the Interstate Commerce Commission was constituted by an Act of Congress of February 17, 1911.

Its organization consists of one chief inspector, and two assistant chief inspectors, appointed by the President and confirmed by the Senate, whose duties are to direct the work of the inspectors and see that the laws, rules and regulations promulgated thereunder are fully carried out. This law also provides that the United States and the District of Columbia shall be divided into fifty locomotive inspection districts, and that one inspector appointed by the Interstate Commerce Commission, shall be assigned to each district.

There are approximatey seventy thousand locomotives in service in the United States which come under the jurisdiction of this Bureau. The law requires that such inspections and repairs shall be made at stated periods and a sworn report, covering the condition of the locomotive and the repairs made to all defects found before it is again returned to service.

The rules and regulations require that each locomotive boiler shall be so constructed and maintained that it will have a suitable factor of safety, and that a specification card containing certain calculations, drawings, and other data necessary in determining the safe working pressure be filed for each locomotive boiler before being placed in interstate service.

The law requires that each inspector shall make personal inspection of the locomotives under his care from time to time, as may be necessary to fully carry out the provisions of the act. His first duty, is to see that the carriers make inspections in accordance with the rules and regulations established or approved by the Interstate Commerce Commission, and that the carriers repair the defects which such inspections disclose.

It further provides for an appeal from the inspector to the chief inspector, and in turn to the Interstate Commerce Commission, in case the carrier believes an injustice has been done by the inspector.

This law requires that in case of an accident resulting from failure from any cause of a locomotive or tender, or its appurtenances, resulting in serious injury or death, a statement forthwith must be made of the facts of such accident by the carrier owning or operating said locomotive to the chief inspector, whereupon, the facts concerning such accident shall be investigated, and that the part affected shall be thoroughly examined and a detailed report of the cause of the accident made, and that such reports shall be made public in such manner as the Commission deems proper.

During the twelve years that this law has been in effect, the Bureau of Locomotive Inspection has investigated 8,602 accidents, which caused the death of 601 persons, and the serious injury of 9,705 others, due to the failure of some part of the locomotive or tender, including the boiler.

A summary of the accidents and casualties caused by the failure of locomotive boilers and their appurtenances only, for the year ending June 30, 1912 (the first year of the existence of this law), as compared with the accidents and casualties occurring from like causes during the fiscal year ending June 30, 1923, shows the substantial decrease of 41 per cent in the number of accidents; 48 per cent in the number killed; and 41 per cent in the number injured, which very clearly establishes the wisdom of the requirements of the law and rules.

Notes on the Constitution—*Con'd from p. 32*

of the Constitution. But treasury warrants, issued by a State, and circulated as money; loan office certificates, issued by State officers, pledging the faith and funds of the State for their redemption; and change bills issued by a State corporation—a railroad owned by the State—and put in circulation as legal tender for debts, redeemable by the State, have been regarded by the Courts as bills of credit and thereby within the Constitutional prohibition.

The Work of Railroad Valuation by the Interstate Commerce Commission—*Con'd from p. 12*

guide the Commission in regulating future issues of railway securities.

In two final value decisions recently announced, *San Pedro, Los Angeles & Salt Lake Railroad Company*, 75 I. C. C., 463, and *Atlanta, Birmingham & Atlantic Railroad Company, et al*, 75 I. C. C., 545, the Commission passed upon the considerations involved in fixing railroad valuations under the provisions of the act. These valuations were announced to be values for rate-making purposes as distinguished from values for condemnation, purchase and sale or other purposes. In those cases the final single sum values were arrived at by the judgment method, which involves taking into consideration all relevant facts, including appreciation, depreciation, and the fact that the carrier is a going concern. Having before it all of the information required by the act in so far as it has been possible of ascertainment, the Commission finds itself in position to exercise an informed judgment based upon a careful consideration of the pertinent facts. A large number of decisions of the Supreme Court of the United States beginning with Smyth *v.* Ames, 169 U. S. 466, 546 were cited as authority for its adherence to this principle of valuation, under which no one element such as cost of reproduction new, cost of reproduction less depreciation, or original cost to date is accepted as the sole criterion of value.

Aside from the judgment method of fixing final values, which was adopted by the majority of the Commission, many other theories of valuation have been advanced. In the main they call for the adoption of some single standard for the measurement of value. In the eyes of their friends and advocates they have the advantage of certainty, stability, and scientific accuracy.

Two of these theories revolve around the idea of cost. The first of them calls for a valuation based upon the reasonable cost at the time of its dedication to the public use of the property now in existence. This is often not the same as the cost to the present owners, but it is contended for it that it is more easily susceptible of definite and precise ascertainment for the property now in use. A second is the prudent investment theory under which value is determined exclusively by a consideration of the account of money prudently invested by the present owners, and here the sacrifice of the investor is thus a guiding consideration. The proponents of both of these theories regard the value for rate-making purposes as for all practical purposes synonymous with cost and unaffected by fluctuations in price levels. They would, however, take account of changes in prices by varying the rate of return.

Others have advocated the fixing of value by taking the cost of reproduction new or cost of reproduction less depreciation—which in this sense includes lands as well as other property—with additional allowances for going concern and other intangible values as the sole index.

Under another theory the value would be fixed by a capitalization of earning power, past, present, and prospective of the railroad under valuation. This is commonly called the commercial theory.

In other quarters the idea has been advanced that the value of railroad property should be fixed upon the basis of the market value of stocks and bonds. As the Commission pointed out in one of its reports to Congress prior to the passage of the valuation act, the market value of securities is very often almost impossible of ascertainment, due to the fact that many stocks and bonds are closely held and are not listed upon any market, and are not the subject of exchange.

Sources From Which Material Used in This Number is Taken

Articles for which no source is given have been specially prepared for the CONGRESSIONAL DIGEST.

A. F. B.—American Farm Bureau Weekly News Letter, Nov. 23, 1922.

C. R.—Congressional Record, March 11, 1922; Feb. 1, 1923.

E. R. J.—Transportation in the U. S., by E. R. Johnson, Ph. D., Sc. D.—Lecturer for LaSalle Extension University, 1914.

G. E. R.—General Electric Review, June, 1919, May, 1921, Dec., 1922, Bulletin, General Electric Co., June, 1922.

I. G. R.—The Institute for Government Research—Service Monographs No. 18, The Interstate Commerce Commission, 1923; No. 19, The Railroad Labor Board, 1923.

J. C. A. L.—Report of the Joint Commission of Agricultural Inquiry, 67th Congress, 1st Session, H. Report 408, Pt. 2—Transportation.

American Federation of Labor, Report, Executive Council, 43d Annual Convention, Portland, Ore., Oct. 1, 1923.

R. H. Aishton, Address, New England Club, Oct. 9, 1923.

Committee on Public Relations of the Eastern Railroads, New York City, 1923, *Broadside*—"Senator La Follette's 'Valuation' Conference."

Senator Brookhart, Address, dinner given Repr. La Guardia, New York City, March 14, 1923.

Senator Cummins, twelve articles in Des Moines *Register* and Washington *Post*, July 20–August 1, 1923.

Samuel O. Dunn, Address, Annual Convention Associated Business Papers, Chicago, Oct. 15, 1923.

Howard Elliot, Railroad Rates, May 8, 1923. *Reprint.*

Senator La Follette, statement in "Washington Times," April 10, 1923.

L. H. Haney, Ph. D. Congressional History of Railways in the U. S. to 1887, 2 vols. Madison, Wis., 1908-10.

Hale Holden, What is the Matter with the Farmer?, March 1, 1923.

J. A. H. Hopkins, Chairman, Information and Education, the Committee of 48, New York City, 1923. *Broadsides*—"Railroads."

L. F. Loree, Address, New York City, April 23, 1923—One Hundredth Anniversary of the Delaware & Hudson.

O. C. Merrill, Addresses, Boston, Dec. 29, 1922; New York, June 8, 1923; Lake Placed, N. Y., Oct. 8, 1923.

C. H. Markham, Address, Nat'l Foreign Trade Convention, New Orleans, May 2, 1923.

Nat'l Conference on Valuation of Anthracite Railroads, Chicago, May 25-26, 1923. Preliminary Report.

James A. Perry, Presidential address at 33d Annual Convention of the Natl. Assn. of Railway Utilities Commissioners, Atlanta, Oct. 11, 1921.

Clyde M. Reed, Address, International Farm Congress, Kansas City, Mo., Oct. 16, 1923.

J. T. Ryan, Statement at hearings before the Interstate Commerce Committee, U. S. Senate, 67th Congress, 1st Session on S. 1156 and S. 2419.

A. P. Thom, Address, Nat'l Assn. of Credit Men, Atlanta, June 12, 1923.

Daniel Willard, Address, Baltimore City Undenominational Assn., Baltimore, Md., Oct. 11, 1923.

—NEXT MONTH—

STATUS OF NATIONAL ISSUES CONFRONTING THE SIXTY-EIGHTH CONGRESS

A REVIEW OF DEVELOPMENTS SINCE CONGRESS ADJOURNED

NEW LEGISLATIVE PROPOSALS

LEGISLATIVE CHANGES RECOMMENDED FOR THE EXECUTIVE DEPARTMENTS

HOW A NEW CONGRESS IS ORGANIZED

THE POLITICAL LINEUP

CHANGES IN COMMITTEES

COMPLETE LIST OF PRESIDENTIAL NOMINATIONS AWAITING SENATE CONFIRMATION

ADDITIONAL FEATURES

THE CONGRESSIONAL DIGEST

Published the Fourth Saturday of Every Month

MUNSEY BUILDING WASHINGTON, D. C.

$5.00 A YEAR 50c A COPY